

- 1           FEDERAL SUBSISTENCE BOARD  
2           Board Meeting of May 3-6, 1999
- 3                   Location of Meeting  
4                   The Egan Center  
5                   Downtown Anchorage, Alaska
- 6                   Transcript of  
7                   May 5, 1999
- 8           Board Members in Attendance:
- 9           Mitch Demientieff, Chairman  
10          Dave Allen, U.S. Fish & Wildlife Service  
11          Warren Heisler, Bureau of Indian Affairs  
12          Niles Cesar, Bureau of Indian Affairs  
13          Judy Gottlieb, National Park Service  
14          Don Ostby, U.S. Forest Service
- 15          Keith Goltz, Office of the Solicitor
- 16          Others:
- 17          Ida Hildebrand, Bureau of Land Management  
18          Tom Eley, U.S. Fish & Wildlife Service  
19          Tom Boyd, U.S. Fish & Wildlife Service  
20          Sandy Rabinowitch, National Park Service  
21          Ken Thompson, U.S. Forest Service  
22          Peggy Fox, Bureau of Land Management  
23          Dan O'Hara, Bristol Bay Advisory Council Chair  
24          Vincent Tutiakoff, Kodiak-Aleutians Advisory Council  
25          Chair  
26          Ralph Lohse, Southcentral Advisory Council Chair  
27          Ronald Sam, Western Interior Advisory Council Acting  
28          Chair  
29          Bill Thomas, Southeast Advisory Council Chair  
30          Willie Goodwin, Northwest Arctic Advisory Council Chair  
31          Fenton Rexford, North Slope Advisory Council Chair  
32          Grace Cross, Seward Peninsula Advisory Council Chair  
33          Harry Wilde, Yukon-Kuskokwim Delta Advisory Council  
34          Chair  
35          John Andrew, Coordinator  
36          Elizabeth Andrews, Alaska Department of Fish & Game  
37          Taylor Brelsford, U.S. Fish and Wildlife Service
- 38
- 39

1 Other Staff Members in Attendance:

- 2 Pat McClenahan  
Dave Fisher  
3 Jerry Berg  
Donna Dewhurst  
4 Barbara Armstrong  
Helen Armstrong  
5 Rachel Mason  
Robert Willis  
6 Cliff Edenshaw  
Helga Eakon  
7 Terry Haynes  
Don Callaway

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## 1           P R O C E E D I N G S

2           (On record - 8:30 a.m.)

3           CHAIRMAN DEMIENTIEFF: Okay. We will  
4           convene the meeting of the Federal Subsistence Board.5           We've got a little bit of work to complete  
6           this morning in Southcentral, and that's where we're  
7           going to begin. But we do have a time specific deferral  
8           on Proposal 34 and the moose portion of Proposal 36 in  
9           Bristol Bay, so we'll note that it is off the table.  
10          And using the prerogative of the chairman, I'm going to  
11          go ahead and allow us to complete Southcentral before we  
12          go to Bristol Bay, and finish that proposal, and then we  
13          will begin the Kenai testimony.14          For those of you who haven't already  
15          completed, and wish to testify, public testimony on  
16          these issues, the blue testimony cards are at the back  
17          table and the folks back there will make sure you get  
18          them to us.19          With regard to completing our work in  
20          Southcentral, the first issue we have up is the Board  
21          policy with regard to individual C&T. And with regard  
22          to that, I'm going to call on Sandy Hamilton to make a  
23          presentation. Sandy Rabinowitch.

24          SANDY RABINOWITCH: Thank you.

25          As the Federal Board knows, there has been  
26          a regulation in place for, well, since the beginning of  
27          the program, in Section 50 CFR 100.16 of the Board  
28          regulations that allows for individual C&T, and that  
29          regulation has seen little to no use.30          Since the inception of the program a year  
31          ago, a proposal was submitted for an individual C&T, and  
32          then this past year several additional proposals were  
33          submitted. The Board directed the Staff Committee to  
34          work on a policy to help deal with this. In simple  
35          terms, the Board's plowing some new ground. And what  
36          I'll do in a moment is go through that policy. I  
37          believe there have been copies at the back table for a  
38          day or two, and all the Board should have copies of  
39          this, as should all the chairmen of the Regional  
40          Advisory Councils.

41          What the policy allows for, just in a quick

1 summary, is the consistent approach in terms of how the  
2 public -- how the public can understand kind of the  
3 rules of the road, and how the Board staff understands  
4 how they should be handled procedurally. The bottom  
5 line is that the policy would allow for proposals from  
6 individuals to come before the Board for individuals  
7 requesting a customary and traditional use for species  
8 in specific areas. When they come forward, as there are  
9 several later today, or this morning, they will then be  
10 taken up on their own merits like any other individual  
11 C&T proposal.

12 And with that, let me get into the policy  
13 paper. This is a one-page front and back paper labeled  
14 Proposed Federal Subsistence Board Policy. The first  
15 paragraph of the paper explains where it is in the  
16 regulations and clarifies that the Board has discretion  
17 with this policy. It also specifically points out that  
18 the regulation allows for this individual C&T  
19 determination only in National Park Service areas.  
20 Then, in terms of the process and procedures, there's a  
21 number of numbered items and I'll walk through those  
22 just very quickly.

23 The first item is: In which National Park  
24 Service areas will the Board make individual  
25 determinations. And what the two paragraphs in this  
26 document lay out is that the Board will make those  
27 determinations in Park areas and Monument areas, but not  
28 Preserve areas. And making that choice is using the  
29 discretion of the Board that I mentioned originally.

30 The second paragraph of the document deals  
31 with who may apply for an individual C&T use  
32 determination. And the answer to that is individuals.  
33 The further answer is that, as many people know, when  
34 Congress wrote ANILCA in terms of Park Service areas,  
35 they laid over what we think of as eligibility  
36 requirements for National Park Service areas.

37 So in simple terms, generally speaking,  
38 fewer people have eligibility in Park Service areas than  
39 other federal public lands. And the way that  
40 eligibility works in simple terms for these areas, for  
41 the Parks and Monuments, is that either you need to be a  
42 member of a resident-zoned community, and those are  
43 listed in the federal regulations for each Park and each  
44 Monument, or you need to hold an individual permit, and  
45 that's often referred to as a 13.44 permit. It's at  
46 Section 13.44 in the Park Service regulations.

1

So the point here is that it's recommended that the Board would take requests from individuals who have accomplished Park Service eligibility. If you had not yet accomplished Park Service eligibility, that would be the first step to be done, and the Board wouldn't receive applications from people who didn't have that under their belt.

5

Let me also point out, and this isn't written down, but Don Callaway, who will present some of the proposals for Unit 11 later, will touch on this. The regulation speaks to individuals. When some of the applicants this past year submitted them, they submitted them and wrote on their applications that they wanted individual C&T for families. What Don will explain is how that was dealt with, and basically you'll hear him explain how he dealt with people in the households. So I just wanted to kind of highlight that, and he'll get into that later.

11

The third paragraph on the back of the page, how do people apply, is the issue. The answer here is very straightforward. Just as anyone else would apply to have a regulation changed during the period of time, usually through the summer and into the fall, that's announced in the Federal Register. So that will be the open window, just the standard approach there.

15

The fourth issue, what criteria are used to evaluate these requests. Again, really no changes. The same eight factors that are found in the regulations, and we've had much discussion over the last few days about those eight factors.

18

The fifth, is there a need to modify any regulations to implement the process? The answer is yes, there's one section, and that's Section .24, actually 24(a), which lists the customary and traditional use determinations. And in that section of the regulation, if you have the paper here you see the highlighted words that would need to be added.

22

What this does is allows for the listing of those individuals who get a positive C&T finding. It provides for a way to record that and then make copies of that available locally in the area, with the local Park Service office, and it also specifies that the list of these individuals would be available on request of anybody who wishes to have a copy.

1

2 Sixth item, what role did the National Park  
3 Service Subsistence Resource Commissions play? The  
4 answer here is, the same that they play now. That is,  
5 that they're given the information about these, and if  
6 they have an opinion and a recommendation, that they  
7 would forward that along. And typically that will come  
8 to the Regional Advisory Council meetings, as has  
9 happened for many years now on other issues.

10 Seventh and last item, what role did the  
11 Regional Advisory Councils play. And the recommendation  
12 here is exactly the same role they play right now, and  
13 that is that these would come before them. They would  
14 offer recommendation if they care to, that would come to  
15 this table, at each annual meeting just like this, and  
16 the Board makes its decision from there.

17 I might note that I believe it's three  
18 Regional Councils, in past years as they have heard  
19 these initial ones, have indicated varying degrees of  
20 interest, some not a very high interest, in hearing  
21 these individual requests. And so, it's -- but other  
22 Councils may want to approach it differently. I mean,  
23 that's three of the ten.

24 So it's envisioned that if more of these  
25 come forward in the future, that the Councils would  
26 basically again be presented with these; and if they  
27 want to hear an analysis like the Board hears and the  
28 Councils hear at their meetings, the staff would go  
29 forward. If they didn't want to hear them, they would  
30 basically say so and it would come to the table here  
31 with the Board having no recommendation from a given  
32 Regional Advisory Council. But that's at the will of  
33 the Regional Advisory Council.

19

20 And with that, I'll simply say that the  
21 Staff Committee recommends adoption of the process that  
22 I've just summarized here and is written out, and I'll  
23 now turn it back over to you, Mr. Chairman.

24 CHAIRMAN DEMIENTIEFF: Okay. So we have  
25 the staff report on that and the Staff Committee  
26 recommendation. Does the Department have any comments  
27 with regard to this particular --

24

25 ELIZABETH ANDREWS: Mr. Chairman, I guess  
26 the only question we still have is that once an  
27 application is put in, what would be the time line for

1 putting together the information so that it would come  
up before the Board in the spring meeting? I guess  
2 we're interested to hear that if somebody puts in an  
application in the fall or something, that by the  
3 Board's spring meeting that there will be the  
information gathered so that there's consideration,  
4 rather than waiting several years before an individual  
C&T might be taken up by this Board.

5  
CHAIRMAN DEMIENTIEFF: Yes. We will -- it  
6 will be treated like a normal proposal. And once the  
application has been received timely, then the Staff  
7 Committee will begin work on it and it will be treated  
just like a regular proposal. And that's how we will  
8 handle even consideration of this policy, we'll handle  
those the same way at the Board meeting.

9  
ELIZABETH ANDREWS: Thank you very much.

10  
CHAIRMAN DEMIENTIEFF: We have no request  
11 for public comments on this issue. Regional Council  
comments?

12  
NAT GOOD: Mr. Chair.

13  
CHAIRMAN DEMIENTIEFF: Yes.

14  
NAT GOOD: Are these comments on the  
15 process now, or on Dan O'Connor?

16  
CHAIRMAN DEMIENTIEFF: On the policy.

17  
NAT GOOD: Well, I think Eastern Interior  
is glad to see that the policy is being put into place.  
18 We feel it's overdue and we think you're doing something  
very wise here.

19  
RALPH LOHSE: Mr. Chairman.

20  
CHAIRMAN DEMIENTIEFF: Yes.

21  
RALPH LOHSE: Southcentral concurs with  
22 that. It's been an issue before us for quite a while.

23  
CHAIRMAN DEMIENTIEFF: Yes, that is the  
intent of the policy, is to find some way to move  
24 forward with implementation.

25  
I might add there's a mixed school of  
thought, you know, and I think Sandy talked about the

1 Regional Council participation and the fact that there  
2 are some of the Regional Councils that don't want to  
3 participate. But I, myself, think it's very important  
4 for the Regional Councils, too. That's why we have the  
5 Regional Councils, to get the local input.

6 So it's with a little reluctance, you know,  
7 that I personally accept a policy without, you know --  
8 and allow these proposals to go forward, without  
9 Regional Council participation, because I think both the  
10 Subsistence Resource Commissions and the Regional  
11 Councils need to help us out, you know, with the local  
12 participation on this. Even though we're prepared to go  
13 forward without it, it's with a little reluctance. And  
14 I don't think I'm the only Board member that has that  
15 view. Ron? Oh, I'm sorry.

16 RONALD SAM: Thank you, Mr. Chairman. I  
17 have one question. How much power, or how much does the  
18 Federal Subsistence Board listen to the SRCs? Because I  
19 would really like to see our SRCs be totally involved,  
20 because they are SRCs for individual Parks, and I would  
21 like to see -- I would like to know how much power that  
22 is vested in them.

23 CHAIRMAN DEMIENTIEFF: With regard to this  
24 issue --

25 RONALD SAM: Yes.

26 CHAIRMAN DEMIENTIEFF: -- you know, they're  
27 equally as important as Regional Councils. And maybe in  
28 some cases as far as bringing the really truly, you  
29 know, because the Regional Councils represent a region,  
30 you know, they're very, very important to us, because  
31 they are for the specific Parks. So it's not one  
32 without the other. I mean, you know, we do want that  
33 participation very much. That's a big part of the --  
34 big piece of this pie. Yes?

35 GRACE CROSS: Mr. Chair, you expressed my  
36 sentiment very well. This is the first I've ever seen  
37 this, probably because I'm new, but it would be nice to  
38 be able to show this to my Regional Advisory Council and  
39 make comments on it. But I'm not sure what part of the  
40 game it is now in. I'm sure that my Council would be  
41 able to make comments. Thank you.

42 CHAIRMAN DEMIENTIEFF: Well, you know, I  
43 think it's our intent to adopt the policy at this time.



1 And this, you know, I don't think it's something that's  
2 cast in stone. You know, if there are recommendations  
3 that come forward from Regional Councils for revisions  
4 of the policy, I think we'd be open, you know, to those  
5 revisions. It's a beginning point for us on how to try  
6 to move forward with these individual C&T requests.  
7 Yeah, if you do have suggestions in the future, or any  
8 Regional Council does, we're going to listen to those.  
9 Willie?

10 WILLIE GOODWIN: Mr. Chairman. Am I  
11 correct in saying that this policy only is only for  
12 Parks and Monuments?

13 CHAIRMAN DEMIENTIEFF: That's correct.

14 WILLIE GOODWIN: The irony is, and I  
15 brought it out yesterday, is that somebody that marries  
16 into another family, for instance, from Kiana to  
17 somebody in Point Hope, 150 miles away, can't come into  
18 the Kobuk Valley National Park and hunt, even though  
19 they grew up in Kiana. That's the sad part of it.

20 CHAIRMAN DEMIENTIEFF: Sandy will respond  
21 to that.

22 SANDY RABINOWITCH: I think there would be  
23 a way. I'm not sure I can construct a scenario as well  
24 as you might, Willie. But if an individual, let's say  
25 it was a -- grew up in a resident-zoned community, for  
instance, and then they moved away. They certainly  
could apply to the Park Service superintendent for the  
individual permit, the 13.44 permit. And in a very  
simple scenario like I just said, I would imagine that  
would be granted. And then as long as they were still  
in a rural community, and the example you gave is that,  
then I think they could, they could go back and hunt.

26 WILLIE GOODWIN: Except for those that move  
27 to Anchorage and Fairbanks and Kenai and Juneau.

28 SANDY RABINOWITCH: Yes, you're correct.  
29 The dilemma there, and the irony there, as you correctly  
30 point out, is then they would be in an urban community  
31 and would not have eligibility to the federal program  
32 because of residence in an urban location.

33 WILLIE GOODWIN: Thank you.

34 CHAIRMAN DEMIENTIEFF: Any additional

1 Regional Council comment? I think we're ready to move  
on. Any Board comment? We're ready to proceed on with  
2 the motion to adopt the policy.

3 NILES CESAR: Mr. Chairman.

4 CHAIRMAN DEMIENTIEFF: Yes.

5 NILES CESAR: I move that we adopt the  
proposed Federal Subsistence Board policy on individual  
6 C&Ts.

7 CHAIRMAN DEMIENTIEFF: There's a motion.  
Is there a second?

8 UNIDENTIFIED SPEAKER: Second.

9 CHAIRMAN DEMIENTIEFF: It's been moved and  
10 seconded. Additional discussion? Hearing none, all  
those in favor of the policy, please signify by saying  
11 "aye."

12 IN UNISON: Aye.

13 CHAIRMAN DEMIENTIEFF: Those opposed, same  
sign.

14 (No response.)

15 CHAIRMAN DEMIENTIEFF: Motion carries.  
16 We'll go to Proposal 25. Staff report, please.

17 HOLLIS TWITCHELL: Chair, Board members,  
Regional Council chairs, I'm Hollis Twitchell. I'm with  
18 Denali National Park. I was asked to present Proposal  
25 since it's directly applicable to the Denali Park  
19 area.

20 Proposal 25 was submitted by Dan O'Connor,  
who requests an individual customary and traditional use  
21 determination for the use of moose from Denali National  
Park lands within wildlife management Units 20(C) and  
22 13(E). Dan O'Connor holds a National Park Service  
subsistence use permit, but is unable to utilize moose  
23 on the Denali National Park lands since he resides in a  
rural committee which does not have a positive customary  
24 and traditional use determination for moose.

25 Proposal 25 replaces a 1998 proposal,  
number 38, which was deferred in last year's cycle.

1 Proposal 38 was presented to the Eastern, Western and  
2 Southcentral Regional Advisory Councils in 1998. The  
3 three Regional Advisory Councils supported Proposal 38  
4 with a modification that individuals with the National  
5 Park Service subsistence use permits be granted a  
6 positive individual C&T determination for use of Park  
7 lands, and that individual names not be listed in the  
8 federal regulations.

9 The intent of their recommendation was to  
10 recognize subsistence use permit holders as a group, and  
11 not have individual names listed in the regulations; and  
12 to reduce the burden of individuals having to go through  
13 duplicating processes before being allowed to practice  
14 their traditional subsistence way of life on National  
15 Park Service lands.

16 The Federal Subsistence Board deferred  
17 Proposal 38 in 1998 and requested a legal review of the  
18 portion of the federal regulations that relates to the  
19 Board's authority to make customary and traditional use  
20 determinations on lands administered by the National  
21 Park Service.

22 The Denali Subsistence Resource Commission  
23 met in August 1998 to review what actions had been taken  
24 on Proposal 38. The Commission passed a motion  
25 supporting Proposal 38 as modified by the Eastern,  
26 Western and Southcentral Regional Advisory Councils.  
27 The Commission is familiar with the Dan O'Connor family  
28 subsistence use of moose in Denali National Park and  
29 believes that he should be granted an individual C&T  
30 use.

31 The Commission has also written to the  
32 Federal Subsistence Board and the Secretary of the  
33 Interior requesting that a legal review be expedited and  
34 that Proposal 38 come back before the Board at the  
35 earliest possible date.

36 In February, the Denali Subsistence  
37 Resource Commission again reviewed Proposal 25 for this  
38 cycle, prior to the Regional Advisory Council's meeting  
39 in February, and again passed a motion in support of  
40 Proposal 25 as it was modified by the Eastern, Western  
41 and Southcentral Regional Advisory Councils.

42 In going into the analysis, the information  
43 presented here was gathered through interviews with the  
44 O'Connor family, Pat O'Connor, Dan O'Connor, through

1 documents within the Park Service's records, and also  
2 from interviews with other individuals who have  
3 firsthand knowledge of the O'Connor family's specific  
4 use in this area.

5  
6 The O'Connor family has depended upon moose  
7 in Alaska as a primary source of sustenance for four  
8 generations, and have regularly and consistently hunted  
9 moose for 57 years in Units 13 and 20. Dan O'Connor's  
10 grandmother and grandfather settled in Palmer in 1940.  
11 They actively hunted moose in Units 13 and 14. Dan  
12 O'Connor's father began hunting moose in 1948 and has  
13 continued uninterrupted through 1998. Dan O'Connor's  
14 father was an eligible subsistence user for Denali  
15 National Park between 1972 and 1995 while he resided in  
16 the McKinley Village area. Dan O'Connor himself has  
17 participated in hunting moose since he was a young  
18 child, and has actively hunted moose every year since  
19 1971.

20  
21 Dan O'Connor is an eligible subsistence  
22 user who resided in the McKinley Village area prior to  
23 moving to Healy in 1981. After establishing his own  
24 household in the Healy area, Dan was issued a  
25 subsistence use permit by the National Park Service to  
continue his use of subsistence resources in Denali.  
Moose is their primary source of sustenance since there  
is no caribou season open in the Healy area.

2  
3 The O'Connor families have hunted,  
4 harvested and shared moose every fall season since 1940  
5 to the present seasons, during the specific times  
6 allowed in the regulations. Fall moose hunting  
7 activities have always been a regular part of the  
8 family's activities, despite extensive regulatory  
9 changes, restrictions and closures to many of their  
10 traditional subsistence seasons and use areas. Numerous  
11 regulations, restrictions on both State and federal  
12 lands within this region have had a negative effect upon  
13 their efficiency and economy of effort and pattern of  
14 use.

15  
16 To cite some examples, the Healy-Lignite  
17 Control Use Area east of Healy in Unit 20(A) is  
18 restricted to bow and arrow hunting only. The Yanert  
19 Control Use Area east of McKinley Village and the Wood  
20 River Control Use Area east of Healy are restricted to  
21 nonmotorized access only, except aircraft for hunting  
22 and transporting large animals. National Park Service  
23 regulations restrict the use of ATVs and aircraft as a

1 means of access for subsistence wildlife harvest. The  
2 winter seasons, with relatively easy access to moose,  
3 have nearly all been eliminated.

4 Despite the many regulatory changes to  
5 seasons and bag limits, access methods and means, and  
6 areas open to harvesting moose, the O'Connors have  
7 continued to maintain a recurring pattern of use within  
8 the area, using traditional means, methods and means,  
9 which are characterized by efficiency and economy of  
10 effort within the constraints of the regulatory  
11 restrictions.

12 The O'Connors travel to their hunting areas  
13 by foot and ORVs, to hunt moose with rifles. The  
14 O'Connors hunted primarily in Unit 13 during the early  
15 years, the 1940s, '50s and '60s. Then they shifted  
16 their primary use areas to Unit 20, and have been  
17 utilizing that area for the last 15 to 20 years. A  
18 major change occurred in 1988 when the State Board of  
19 Game passed a negative customary and traditional use  
20 determination, closing federal lands in Unit 20(C) to  
21 moose hunting for residents of the McKinley Village area  
22 and the area along the Parks Highway, Highway Mile 216  
23 to 239.

24 As a result, from 1988 to the present, Dan  
25 and Pat O'Connor families were excluded from subsistence  
26 hunting moose from Denali National Park lands in Unit  
27 20(C) and 13(E). During this period, the family was  
28 forced to travel further from their resident communities  
29 in McKinley Village and Healy to hunt on adjacent state  
30 lands under state hunting seasons.

31 The O'Connors use all eligible parts of the  
32 moose. Winter freezing -- excuse me. Freezing meat  
33 outdoors is done during the colder winter months and is  
34 not usually possible during the September hunt, so the  
35 meat is canned or stored in freezers to preserve it.  
36 Some portions of the moose are processed by drying and  
37 jerkying. The O'Connors use the same process learned  
38 from his parents and grandparents and is passing those  
39 skills and knowledge on to his son. The handling  
40 techniques are common both historically and during the  
41 contemporary period across the state. When weather  
42 permits, Dan brings out the nonedible portions to use as  
43 trapping bait for his winter trapping activities.

44 Dan O'Connor's grandparents learned their  
45 hunting skills regarding Alaska hunting in the Palmer

1 and the Glennallen area. Dan, as a young child,  
2 accompanied his father and mother and often other  
3 relatives long before he was actually old enough to hunt  
4 himself. Dan hunted moose every year since he turned 10  
5 years old. Dan O'Connor continues to use traditions  
6 with his family and is passing them on to his children.  
7 Hunting, trapping and fishing are significant values  
8 upon which the O'Connor families depended.

9  
10 Moose hunting is generally a family event,  
11 participated in and shared by all family members, both  
12 within and between households. They've shared in their  
13 harvest between family members and other nonfamily  
14 members who were participating in the hunt. They  
15 traditionally share their resources at annual community  
16 events, potlucks and holidays and social gatherings.  
17 They share the resources with friends and neighbors and  
18 those in need and those who assisted in the processing  
19 of the harvest.

20  
21 Moose were, and still are, the O'Connor  
22 families' primary source of meat, but the family  
23 utilizes a wide variety of subsistence resources, such  
24 as caribou, sheep, bear, ptarmigan, spruce hens, hare,  
25 fish, and fur bearers such as beaver, marten, fox, wolf,  
lynx, and otter.

26  
27 In addition to wildlife and fish resources  
28 providing substantial nutritional needs of the family,  
29 the hunting and harvest activities provide a significant  
30 social and family activity involving all members of the  
31 household. Often, multiple generations in several  
32 O'Connor households participate in the fall moose  
33 hunting and processing activities together.  
34 Approximately 85 percent of Dan O'Connor's meat comes  
35 from resources from hunting. Typically, wildland  
36 resources provide meals five out of seven days per week.  
37 That concludes the analysis.

38  
39 CHAIRMAN DEMIENTIEFF: Thank you. Are  
40 there any written public comments?

41  
42 HELGA EAKON: Yes, Mr. Chair. The program  
43 received four written comments on Proposal 25.

44  
45 The Eastern Interior Regional Advisory  
46 Council would like an expedited resolution to individual  
47 customary and traditional use determinations with  
48 respect to National Park Service lands. They said that  
49 qualified subsistence users have been denied subsistence

1 opportunity for too many years on Park lands.

2 The Western Interior Regional Council had  
the same comment, adding that they recommend that all  
3 CFR 13.44 permittees be granted a positive C&T  
determination for Park lands.

4  
The Delta Advisory Committee supports the  
5 proposal.

6 The Denali National Park and Preserve  
Subsistence Resource Commission supports Proposal 25 as  
7 modified by the Eastern Interior, Western Interior, and  
the Southcentral Regional Advisory Councils in their  
8 1998 deliberations of deferred Proposal 38. End of  
comments.

9  
CHAIRMAN DEMIENTIEFF: Staff Committee  
10 recommendation?

11 KEN THOMPSON: The Staff Committee  
recommends adopting Proposal 25, with the modification  
12 that specifies the individual customary and traditional  
use determination applies only to Denali National Park  
13 lands within Units 20(C) and 13(E). The Eastern,  
Western, and Southcentral Councils recommended modifying  
14 the proposal to include broader groups of individuals,  
such as 13.44 permittees, residents of resident-zoned  
15 communities, and other qualified individuals.

16 The Staff Committee, however, felt it was  
premature to concur with these recommendations before  
17 the Board has evaluated and acted on these options.  
Accordingly, the Staff Committee evaluated the merits of  
18 Dan O'Connor's individual circumstances. The testimony  
and written record provided by Dan and Pat O'Connor  
19 provides adequate documentation that Dan O'Connor has  
customarily and traditionally harvested moose in the  
20 portions of Unit 20(C) and 13(E) at issue.

21 Dan O'Connor and his family have  
established a customary and traditional use of moose  
22 long before Dan's move from McKinley Village to the  
community of Healy. He should be granted an individual  
23 customary and traditional use determination to utilize  
subsistence moose resources from Denali National Park  
24 lands within Units 13(E) and 20(C).

25 CHAIRMAN DEMIENTIEFF: Thank you.  
Department comments?

1

ELIZABETH ANDREWS: Mr. Chairman, the Staff  
2 Committee recommendation included the concerns that we  
had raised in our written comments, and therefore we  
3 support the Staff Committee recommendation.

4

CHAIRMAN DEMIENTIEFF: Thank you. Gloria  
Stickwan, you had filled out a -- did you wish to  
5 comment on this particular issue?

6

GLORIA STICKWAN: I support the families  
using C&T for the area that they're proposing to use if  
7 they can prove C&T.

8

CHAIRMAN DEMIENTIEFF: Is Miss Calcote  
here? Will somebody advise me if she does come in,  
9 because she's had a request in and I've called upon her  
for a couple of days. Regional Council comments?

10

NAT GOOD: Mr. Chairman. Eastern Interior  
11 is going to be very glad to not see this one on an  
annual basis. And we think that at the same time --  
12 we're assuming this will be granted this year -- that we  
should perhaps thank Dan O'Connor for his patience and  
13 thank him also for his tenacity, because I don't think  
without him sticking with it here we'd have gotten this  
14 policy. So I think that we appreciate his efforts.  
Thank you.

15

CHAIRMAN DEMIENTIEFF: Thank you.  
16 Additional Regional Council comments? Mr. Sam.

17

RONALD SAM: Thank you, Mr. Chairman. We  
concur with Eastern Interior. It seems like we go  
18 through this every meeting that we have. I would like  
to go back and reiterate the powers vested in individual  
19 SRCs. I think that if they have that much power, that  
they could grant them outright, National Park Service  
20 SRCs. If they're individually vested and recognized, I  
think that we should give them more power to go ahead  
21 and grant these individual C&Ts, instead of coming  
before the Federal Board. Thank you.

22

CHAIRMAN DEMIENTIEFF: Thank you. Ron, you  
23 know, the understanding that I have is that we can't  
grant the authority to the SRCs. It's strictly vested  
24 in the Board. But at least now we have a process when  
an SRC is dealing with this issue, that they can advance  
25 it to us and it's going to be a key part of our  
considerations. And that's what I'm talking about. But



1 there's no way under existing regulation that we can  
grant that authority to the SRC, but certainly we would  
2 be able to advance it. Additional comment?

3 RALPH LOHSE: Mr. Chair.

4 CHAIRMAN DEMIENTIEFF: Yes.

5 RALPH LOHSE: Ralph Lohse, Southcentral.  
We'd like to concur with the eloquence of the Eastern  
6 Interior and the way they expressed our feelings  
completely.

7 CHAIRMAN DEMIENTIEFF: Thank you.  
8 Additional Regional Council comment? Do we have a  
motion?

9 JUDY GOTTLIEB: Mr. Chairman?

10 CHAIRMAN DEMIENTIEFF: Yes.

11 JUDY GOTTLIEB: Public testimony and  
12 written record provided by Dan O'Connor provides  
adequate documentation. I move that we modify the  
13 Southcentral, Eastern Interior and Western Interior  
Regional Advisory Councils' recommendations for Proposal  
14 25. The modification would grant an individual  
customary and traditional use determination for Dan  
15 O'Connor for moose on Denali National Park lands within  
Units 20(C) and 13(E). Let me clarify. This does not  
16 include Preserve land nor Park lands established prior  
to 1980. Only those Park lands established by ANILCA in  
17 1980.

18 CHAIRMAN DEMIENTIEFF: Okay. That was your  
motion? Now we need a second. I got lost in the  
19 filibuster. I'm sorry. Is there a second?

20 PEGGY FOX: I'll second.

21 CHAIRMAN DEMIENTIEFF: Okay. Additional  
discussion? Final Regional Council comment? Hearing  
22 none, all those in favor of the motion please signify by  
saying "aye."

23 IN UNISON: Aye.

24 CHAIRMAN DEMIENTIEFF: Those opposed, same  
25 sign.

1 (No response.)

2 CHAIRMAN DEMIENTIEFF: Motion carries. So  
9 and 11 will be considered together; is that correct?  
3 Okay. Go ahead. Staff report?

4 DON CALLAWAY: Mr. Chairman, Board members,  
and Regional Advisory Council chairmen, my name is Don  
5 Callaway. I work for the National Park Service in  
Anchorage. I did the staff work on Proposals 9 and 11,  
6 which address the individual C&T for Frank Entsminger,  
Danny Grangaard, Doug Hoskens for use of sheep in Unit  
7 11, south of Sanford River.

8 Based on these interviews and utilizing the  
eight factors, Danny Grangaard and Frank Entsminger  
9 indicated a high use of subsistence foods, use of a  
variety of wildlife resources, up to 30 species each. A  
10 large part of their diet comes from subsistence  
products, probably 75, 85 percent of the meat in their  
11 diet. They share these products widely both within the  
community and within family. They teach their children  
12 preservation techniques, utilize the whole animal. And  
both Danny Grangaard and Frank Entsminger have  
13 demonstrated a long-term consistent use, beginning in  
the mid 1960s, for these resources, south of the Sanford  
14 River. Whereas, Doug Hoskens, although he meets many of  
the eight factors, did not demonstrate such a use of the  
15 resource. He was interested, in this case, in sheep  
south of Sanford River.

16  
CHAIRMAN DEMIENTIEFF: Thank you. Written  
17 public comments?

18 HELGA EAKON: Mr. Chair, we received three  
written comments of support, from the Upper Tanana  
19 Fortymile Advisory Committee, the Delta Advisory  
Committee, and the Wrangell-St. Elias National Park  
20 Subsistence Resource Commission. End of comments.

21 CHAIRMAN DEMIENTIEFF: Staff Committee  
recommendation?

22  
KEN THOMPSON: The Eastern Interior and  
23 Southcentral Regional Councils recommended modifying the  
proposals to include broader groups of individuals, such  
24 as the 13.44 permittees, residents of resident-zoned  
communities, and other qualified individuals.

25  
The Staff Committee, however, felt it was

1 premature to concur with these recommendations before  
the Board had evaluated and acted on these options.  
2 Accordingly, the Staff Committee evaluated the merits of  
the individual applications. And the results of those  
3 evaluations lead us to recommend to the Board that it  
adopt the proposal to grant an individual customary and  
4 traditional use determination to Frank and Sue  
Entsminger for goat on National Park lands in Unit 11.

5  
Secondly, adopt the proposal to grant an  
6 individual customary and traditional use determination  
to Danny and Lance Grangaard for sheep on National Park  
7 lands in Unit 11 south of the Sanford River, and for  
goat on National Park lands in Unit 11.

8  
And thirdly, to reject the request to grant  
9 an individual customary and traditional use  
determination to Greg Hoskens for sheep south of the  
10 Sanford River in Unit 11.

11 CHAIRMAN DEMIENTIEFF: Department comments?

12 ELIZABETH ANDREWS: Mr. Chairman, the  
Department supports the recommendation made by the Staff  
13 Committee since our written comments were taken into  
consideration, or at least our concerns were addressed  
14 by that recommendation. So we support the individual  
determination for Frank and Sue Entsminger and for Danny  
15 and Lance Grangaard.

16 We do have a comment, though, on the  
proposed rejection of the C&T finding for Doug Hoskens,  
17 since it appears that that's based largely on the fact  
that he didn't hunt in the area due to regulatory  
18 constraints, and it's our understanding that such  
interruptions are beyond the control of local residents  
19 and therefore should be taken into account when  
evaluating the eight factors. Thank you, Mr. Chair.  
20

CHAIRMAN DEMIENTIEFF: Don, do you have  
21 some response to that?

22 DON CALLAWAY: Yes, Mr. Chairman. The  
intent of this individual C&T is to grant individual C&T  
23 to households who have a demonstrated use prior to 1980  
of the resource in the particular area they're  
24 requesting C&T for. Both Danny and Frank's households  
demonstrated prior to 1980 a long-term consistent use of  
25 the resource in that area. Whereas, Doug Hoskens had  
the opportunity, since he lived in the area for about

1 the same amount of time, to hunt in that area prior to  
2 1980, but had not.

2

3 So that on Factor 1, which is a long-term  
4 consistent use of the resource, and based on the logic  
5 of the individual C&T process; that is, you have to have  
6 used the resource in the area consistently prior to  
7 1980. So I don't believe there is a contradiction  
8 there.

9 CHAIRMAN DEMIENTIEFF: Thank you. Did you  
10 wish to add additional public -- okay, thank you.  
11 Regional Council comments?

12 NAT GOOD: Mr. Chairman?

13 CHAIRMAN DEMIENTIEFF: Yes.

14 NAT GOOD: I'll read what Eastern Interior  
15 has here. Support with modification that resident-zoned  
16 communities, 13.44 permittees, and qualifying individual  
17 families be granted positive C&T determinations for Unit  
18 11.

19 When you look at this, what we were really  
20 looking at was trying to avoid some of the duplication  
21 of effort and provide a means for a family to be  
22 recognized here. I think this policy that you've just  
23 passed here has given us a method of doing that. And  
24 I'd have to also comment that we didn't have all of the  
25 materials at our meeting on the individual families, but  
26 I think at this point we certainly would support what we  
27 perceive to be the Board's action here.

28 CHAIRMAN DEMIENTIEFF: Thank you. Could we  
29 maybe respond. Sandy, are you prepared to respond to  
30 the Regional Council modification, or their request for  
31 modification, with regard to 13.44 permittees?

32

33 SANDY RABINOWITCH: I'd be happy to.

34

35 CHAIRMAN DEMIENTIEFF: Would they be  
36 allowed to bring a proposal like that forward under our  
37 existing policy?

38

39 SANDY RABINOWITCH: If I understand the  
40 Council's recommendation from -- and I was at one of the  
41 meetings, I think in Minto, where this was discussed at  
42 some length. I understand that the Council wanted to  
43 take those people who had 13.44 permits, the individual

1 permits, and essentially grant them individual C&T based  
on the fact that they had permits. Let me make sure I'm  
2 on the right track. Right. Okay.

3 My understanding -- the bottom line, as I  
understand it, consistent with the policy that we just  
4 put in front of you and you adopted, which is also in  
large part based on the legal opinion from the Regional  
5 Solicitor's Office of the regulation, is that the answer  
to that is we can't do that. And the simple reason is  
6 that the 13.44 permits are issued under a separate  
criteria, those being Park Service criteria, in Section  
7 13.44 of the Park Service regulations, and as such are  
Park Service decisions. Though the Park Service is a  
8 member of the Federal Board, the Federal Board's a  
separate entity and has its own regulations. And so, my  
9 grasp of what we've been told by the Solicitor, they're  
two separate decision making processes and basically  
10 they need to be kept separate. Does that make sense?

11 RONALD SAM: I'll have to read through, but  
what you have said so far makes sense and I thank you  
12 for addressing it.

13 SANDY RABINOWITCH: Okay. I'm happy to  
talk with you or anyone else in the audience later, if  
14 that would help.

15 CHAIRMAN DEMIENTIEFF: Any additional  
Regional Council comments? Yes, Ralph.  
16

RALPH LOHSE: Mr. Chair, Ralph Lohse,  
17 Southcentral. Like Eastern Interior said, we did not  
have this information in front of us on the individuals  
18 to pursue it. I have a couple questions on the staff  
analysis, if I may ask them.  
19

One of the questions is why Frank  
20 Entsminger and his family would be found a positive C&T  
for goat in Unit 11 and not for sheep, when in his thing  
21 he talks about hunting sheep in Unit 11, and would like  
the -- he already has one?

22 UNIDENTIFIED SPEAKER: He has eligibility  
23 for Unit 11 already, for sheep.

24 RALPH LOHSE: He has eligibility in Unit 11  
for sheep?

25 UNIDENTIFIED SPEAKER: Right, because his

1 residence is below the C&T line.

2 RALPH LOHSE: Thank you.

3 CHAIRMAN DEMIENTIEFF: Additional Regional  
Council comment? If none, we'll advance to the Board.

4 I'm a little bit -- this is kind of a mishmash of two  
proposals. I'm kind of curious how we're going to go  
5 forward here. Are we going to -- separate motions? So  
we're going to do 9?

6 JUDY GOTTLIEB: Mr. Chairman, I have two  
7 motions for Number 9.

8 CHAIRMAN DEMIENTIEFF: Okay.

9 JUDY GOTTLIEB: The first one being, I move  
that we modify the Southcentral and Eastern Interior  
10 Regional Advisory Council recommendations for Proposal  
Number 9. The modification would grant an individual  
11 customary and traditional use determination for Danny  
and Lance Grangaard for sheep on Wrangell-St. Elias  
12 National Park lands within Unit 11, the remainder south  
of the Sanford River. And again let me clarify, this  
13 would not include Preserve lands.

14 CHAIRMAN DEMIENTIEFF: Okay. Is there a  
second to that motion?

15 UNIDENTIFIED SPEAKER: Second.

16 CHAIRMAN DEMIENTIEFF: It's been moved and  
17 seconded. Is that Proposal Number 9 or 11?

18 JUDY GOTTLIEB: This is Number 9 for  
Grangaard sheep.

19 CHAIRMAN DEMIENTIEFF: Okay. Discussion?  
20 Hearing none, all those in favor, please signify by  
saying "aye."

21 IN UNISON: Aye.

22 CHAIRMAN DEMIENTIEFF: Those opposed, same  
23 sign.

24 (No response.)

25 CHAIRMAN DEMIENTIEFF: Motion carries.  
Okay.

1

JUDY GOTTLIEB: And Mr. Chairman, I then  
2 have a second motion for Proposal Number 9. I move that  
we reject the request to grant an individual customary  
3 and traditional use determination to Doug Hoskens on  
Wrangell-St. Elias National Park lands within Unit 11,  
4 the remainder south of the Sanford River.

5

CHAIRMAN DEMIENTIEFF: That's the motion.  
Is there a second?

6

UNIDENTIFIED SPEAKER: Second.

7

CHAIRMAN DEMIENTIEFF: Discussion? Hearing  
8 none, all those in favor signify by saying "aye."

9

IN UNISON: Aye.

10

CHAIRMAN DEMIENTIEFF: Those opposed, same  
sign.

11

(No response.)

12

CHAIRMAN DEMIENTIEFF: Motion carries.  
13 What about 11?

14

JUDY GOTTLIEB: Mr. Chairman, I have two  
more motions, please.

15

CHAIRMAN DEMIENTIEFF: Okay.

16

JUDY GOTTLIEB: And these involve Proposal  
17 Number 11. I move that we modify the Southcentral and  
Eastern Interior Regional Advisory Council  
18 recommendations for Proposal Number 11. The  
modification would grant an individual customary and  
19 traditional use determination for Frank and Sue  
Entsminger for goat on Wrangell-St. Elias National Park  
20 lands within Unit 11. Once again to clarify, this does  
not include Preserve lands.

21

CHAIRMAN DEMIENTIEFF: Is there a second to  
22 that motion?

23

UNIDENTIFIED SPEAKER: Second.

24

CHAIRMAN DEMIENTIEFF: Moved and seconded.  
Discussion? This is 11?

25

JUDY GOTTLIEB: This is 11.

1  
CHAIRMAN DEMIENTIEFF: And the subsequent  
2 one is also 11?

3 JUDY GOTTLIEB: Correct.

4 CHAIRMAN DEMIENTIEFF: Okay. Is there any  
further discussion on 11-A, motion 11-A? I don't know  
5 what we call it, we never dealt with these before.

6 JUDY GOTTLIEB: Right.

7 CHAIRMAN DEMIENTIEFF: Discussion? All  
those in favor of the motion, please signify by saying  
8 "aye."

9 IN UNISON: Aye.

10 CHAIRMAN DEMIENTIEFF: Those opposed, same  
sign.

11  
(No response.)

12  
CHAIRMAN DEMIENTIEFF: Motion carries.  
13 Okay.

14 JUDY GOTTLIEB: Mr. Chairman, 11-B, motion  
for Proposal Number 11. I move that we modify the  
15 Southcentral and Eastern Interior Regional Advisory  
Council's recommendation for Proposal Number 11. The  
16 modification would grant an individual customary and  
traditional use determination for Danny and Lance  
17 Grangaard for goat on Wrangell-St. Elias National Park  
lands within Unit 11. This does not include Preserve  
18 lands.

19 CHAIRMAN DEMIENTIEFF: There's a motion.  
Is there a second?

20  
UNIDENTIFIED SPEAKER: Second.

21  
CHAIRMAN DEMIENTIEFF: Discussion? Hearing  
22 none, all those in favor of the motion, please signify  
by saying "aye."

23  
IN UNISON: Aye.

24  
CHAIRMAN DEMIENTIEFF: Those opposed, same  
25 sign.



1 (No response.)

2 CHAIRMAN DEMIENTIEFF: Motion carries.  
Okay, that completes our work in Southcentral.

3  
4 We now will move back -- what region is  
Bristol Bay?

5 UNIDENTIFIED SPEAKER: Four.

6 CHAIRMAN DEMIENTIEFF: Region 4, Bristol  
Bay. Proposal Number 36. And the moose portion of  
7 Proposal 34. Is that correct? Did I do that right?

8 UNIDENTIFIED SPEAKER: Yes.

9 CHAIRMAN DEMIENTIEFF: Okay. We've already  
exhausted through the staff report recommendations,  
10 heard all the comments, all the public testimony. We  
had a motion to adopt the Interagency Staff Committee  
11 recommendation, which failed on a 3-3 vote. We are  
waiting at this time for some information regarding  
12 additional field work, and Mr. Allen, I think, may have  
a report for us with regard to that issue.

13  
14 DAVE ALLEN: Yes, Mr. Chairman. I do want  
to speak to the issue of additional field work, but  
before I do that, just very briefly I'd like to add some  
15 information that was not part of the Staff Committee's  
report that is an indicator of nonlocal effort in this  
16 area. Our Refuge permits all the air taxis that drop  
hunters off in the federal lands, the Refuge portion of  
17 federal lands. Our records from 1991 through 1997, 15  
air taxis shown there have been no drop-offs of moose  
18 hunters in those years in the area that's proposed for  
closure.

19  
20 Just last year there was an individual in  
Chignik. I don't know if it's Chignik or Chignik  
Lagoon, but the operator of Chignik Air, who was  
21 permitted by the Refuge for the first time in 1998, he  
did ferry four hunters last year into that area, and I  
22 also understand he probably does some contract work for  
some of the guides in that area as well.

23  
24 Once again, this is just some additional  
information to indicate the fact that the use level in  
this area by nonlocal residents is very low, as was  
25 indicated by the harvest tag information and the other  
information that was shared with us yesterday.

1

On the issue of doing a survey, before the Board makes a decision relative to this proposal, Fish and Wildlife Service certainly can and is willing to do this. However, I think I should point out for the Board that the utility of the information that is gained by the survey, even if we do it in the next few days, may be relatively small.

5

If in fact the absence of snow cover in areas where moose might be becomes a factor, that of course complicates the survey. Moose should be beginning to disperse. Bulls of course have dropped their antlers at this time. Last year's calves may be separated from cows, which increases the likelihood of misclassifying some of the data. And because of all these things, the key population statistics that we would be looking for; namely, the bull-cow ratios and calf-cow ratios, it would be very difficult, if not impossible, to obtain.

11

In spite of this, Mr. Chairman, we are certainly willing to do this. In fact, I believe, Dan, one person that may be contacted to do this is, I believe, your son, Tom, as you indicated, may be willing to do that. But I felt that it's important that the Board know that even with this information, it may be of rather marginal value to us with respect to bringing any more pertinent information to the board. But as I said, we are certainly willing to do that at the pleasure of the Board, and we can do that very soon so that a decision could be made well in advance of the season.

17

CHAIRMAN DEMIENTIEFF: Mr. O'Hara, do you have additional comment with regard to that?

DAN O'HARA: Yes. Dan O'Hara, Chair, Bristol Bay. My son, Tom, works for (inaudible), so I better not make any commitments where he's going to be going. He may not have a job.

21

But actually, if -- I think it's possible to do a survey still within the next week or so, ten days, depending on the weather, and all we're looking for is adequate number of animals there. The bulls have fairly good size horns already, they're sticking out that far already, they're growing the horns. So at least the big ones you can tell. And there's no foliage, and they're still herded up together. I came by the other day and lying there in the community, Lake

1 Iliamna, was seven animals in the village boundaries  
together. So I think that would be good.

2

One of the things we were thinking might  
3 take place is, occasionally you let an observer go  
along, Dave, to look, and if you had an extra seat for  
4 someone from the Village Council or something, so that  
when we say we're representing these subsistence needs,  
5 they're on board, they're looking at it, too, and  
they're going to see the animals there. And I think  
6 we'd all benefit by that, so -- I certainly would buy  
off on that if we could do that. And then, you know,  
7 make your proposal subject to the survey of those  
animals or do something different. Thank you,  
8 Mr. Chairman.

9

CHAIRMAN DEMIENTIEFF: I guess in looking,  
10 trying to look for some solution here, and I guess --  
let me just toss out an idea, if we have an agreement  
11 that we can get this done in the next week to ten days,  
to set aside the conservation concerns. You know, what  
12 I'm suggesting is that maybe we may want to simply defer  
consideration of the proposal, which would leave the  
13 existing regulation on the books. And I certainly would  
be sensitive to, you know, Regional Council request to  
14 bring the proposal up again, you know, pending this  
information if we're able to get out there in the next  
15 week or ten days. And that, you know, I think would  
potentially resolve the issue, pending additional  
16 biological information.

17 I think, as Mr. Allen pointed out, it would  
not be as -- you know, if the conservation concerns of  
18 the population were to be resolved, it would not be as  
beneficial to the local subsistence users because the  
19 interagency staff recommendation did add some time to  
the season. You know, and pending good biological  
20 information, we could certainly maybe deal even with  
that issue as a special action request, or however the  
21 Regional Council wants to do it. But pending further  
analysis of the biological -- of the conservation  
22 concerns, it may be at least a short-term remedy that we  
could deal with. And then if things did turn out, you  
23 know, the conservation concerns were there, you know, I  
think we would be responsive to bringing the deferral  
24 off, you know, and dealing with it, even it's a  
teleconference mode, fairly soon, so we can get some  
25 resolve to this issue one way or the other fairly  
quickly.

1

2 Mr. O'Hara, do you have any comments on  
that?

3

DAN O'HARA: That would be fine. Just go  
4 ahead and do your action according to the survey, and go  
from there. And if we have adequate animals, go back to  
5 your existing regulation. I don't think we have to come  
back again. You know, one of the things that the  
6 Councils do is, working and living in the area, we are  
aware of these type of situations that exist. For  
7 instance, in the Park Service last year, they did not do  
a stream survey in the fall of Naknek Lake. That's very  
8 critical. That stream survey has to be done every fall.  
You're not going to be able to tell what's going on with  
9 the resource there if you don't do that stream survey.

10 So this is one of the jobs that we have.  
We can, as Council chairs, and as the Council represents  
11 the area, come back and ask the departments to look more  
closely at these issues, because we -- our first -- our  
12 first thing we do in the Bristol Bay Council, we take  
care of the resource, and then we take care of  
13 subsistence. Thank you very much, Mr. Chairman.

14 CHAIRMAN DEMIENTIEFF: Willie, and then --  
go ahead.

15

WILLIE GOODWIN: Thank you, Mr. Chairman.  
16 One of our proposals early on, which we pulled back, was  
of the same issue. Mainly because the subsistence user  
17 at home automatically notices when something is wrong,  
when the animals are not there. Furthermore, when the  
18 count was done -- I'm using the moose situation at  
Squirrel River as an example here. When the count was  
19 done, they estimated 1300 moose. That was in October.  
In November I flew with one of the local guys. Two  
20 airplanes went out. We counted 140 moose in the area.  
Granted, they migrate, we know that. But we also know  
21 where the high concentrations of the moose are at that  
time of the year. I mean, that's local knowledge. We  
22 know that. So we counted, and that's what we counted.  
Granted, we're not experts in counting, but my God, we  
23 didn't miss them by much.

24 The other thing I'd like to point out is  
that from our observations in both the Squirrel and --  
25 because moose migrate between Noatak Preserve and  
Squirrel River and the Lower Kobuk areas, this spring's

1 calf count or ratio that the Park Service done, has  
indicated already that the calf production is real low.  
2 It certainly substantiates the concern that the local  
people had of the moose population in our area.

3

Now I'm a little worried about our moose.  
4 I want to take a look at that a little bit further and  
may pull back that proposed regulation to close it off  
5 to nonqualified subsistence user. But it's an  
observation that -- and it's something that we've done  
6 that I take note in his same situation there. And I'm  
glad that there will be a count to see what's happening  
7 out there. We went through that up there, and if the  
calf count is correct, then certainly the observations  
8 by our people are correct. Thank you.

9 CHAIRMAN DEMIENTIEFF: Yes, Mr. Allen.

10 DAVE ALLEN: Just a comment, Mr. Chairman.  
As you indicated, if we're able to address the  
11 conservation concerns through the survey and  
subsequently then take no action on the motion, it  
12 should be noted that the State regulations have already  
extended the seasons to 20 days in January. So even if  
13 we took no action, that part of our motion -- that part  
of the proposal, at least, would be available to local  
14 residents, irrespective of our decision here today. I'm  
sorry; of any decision we ultimately make on this.  
15

CHAIRMAN DEMIENTIEFF: As I would indicate,  
16 there would be nothing to prevent, you know, a special  
action request to match, to align our season. And if  
17 the biology was there, and the conservation concerns  
were addressed, I think it would be a fairly easy matter  
18 for us to align the seasons. Niles?

19 NILES CESAR: Yes, Mr. Chairman. Just a  
process question. As I understand it, this motion  
20 failed 3-3, so we therefore have nothing before us.

21 CHAIRMAN DEMIENTIEFF: That's correct.

22 NILES CESAR: That's correct. So would it  
be our intent, then, to leave it as nothing before us,  
23 or make a motion to adopt something that we would later  
ratify, and table it?

24

CHAIRMAN DEMIENTIEFF: I don't really look  
25 for -- I was looking for a deferral motion, just a  
motion to defer.

1

2 NILES CESAR: But you have to have  
something on the table before you can defer something.

3

CHAIRMAN DEMIENTIEFF: Well, the proposal  
is still before us. The motion that failed was a motion  
4 to accept the interagency request over the Regional  
Council recommendation. That was the motion that failed  
5 on the 3-3 vote. Okay? So the proposal is still before  
us. And what I was -- procedurally, I was thinking that  
6 a motion to defer consideration of that proposal would  
leave it before us if the biological concerns weren't  
7 met, and allow us an easy opportunity -- the easiest  
opportunity to consider it.

8

NILES CESAR: Thank you, Mr. Chairman.

9

DAVE ALLEN: Mr. Chairman?

10

CHAIRMAN DEMIENTIEFF: Were you getting  
11 ready to make a motion?

12

DAVE ALLEN: Well, I don't want to bog this  
up, but I thought there was a second motion that we  
13 tabled yesterday, and the record would show that. Which  
is the Regional Advisory Council's proposal. I believe  
14 a second motion was made and seconded and we tabled it.

15

CHAIRMAN DEMIENTIEFF: The motion was to  
table the action until 8:30, the consideration of this  
16 proposal until 8:30 this morning, time specific. So we  
don't have a motion before us. Ralph? Yes, Ralph.

17

RALPH LOHSE: Mr. Chair. Dave Allen kind  
18 of answered one of my questions. One of the things that  
I was wondering is whether you could split your motion  
19 and at least make sure that the season was extended to  
January 20th. But if the State season is extended to  
20 January 20th, then they're allowed to hunt on federal  
lands until January 20; am I correct in assuming that?

21

22

DAVE ALLEN: Even if we take no action.

23

RALPH LOHSE: Even if you take no action at  
all.

24

DAVE ALLEN: Yeah.

25

RALPH LOHSE: Then I'd like to comment on

1 Dan's suggestion, and I think this would be a good thing  
in a lot of situations, is if in some way or another --  
2 now, I realize it's hard when you're out flying Super  
Cub doing counts, to have somebody else along. But it  
3 would really pay in the future if sometimes you could  
take an observer from the area. I think that's one of  
4 the best suggestions I've heard. Because it would help  
to alleviate some of the confusions and fears and things  
5 like that. I know it's hard to find people that are  
capable of sitting in a plane and doing moose counts,  
6 because a lot of people can't take it, but it would sure  
be worthwhile doing.

7

CHAIRMAN DEMIENTIEFF: Thank you. Yes?

8

DAVE ALLEN: Just in response to Ralph. We  
9 make every effort to do that, particularly when people  
are interested in participating. That was a key issue,  
10 as a matter of fact, with caribou, near the Izembek  
Lagoon, in the very southernmost end of the peninsula,  
11 and I think that went a long way, I think, to build  
confidence and credibility in these efforts.

12

Mr. Chairman, I'm prepared to make a  
13 motion, if it's appropriate to do so now.

14 CHAIRMAN DEMIENTIEFF: Yes.

15 DAVE ALLEN: Mr. Chairman.

16 CHAIRMAN DEMIENTIEFF: I'm sorry.

17 NILES CESAR: You tabled this motion. It  
doesn't go anywhere until you take it off the table. So  
18 somebody has to make a motion to bring it off the table.

19 CHAIRMAN DEMIENTIEFF: No; it was tabled  
time specific.

20

NILES CESAR: It was tabled until --

21

CHAIRMAN DEMIENTIEFF: No; it was tabled  
22 time specific. The motion was time specific until 8:30  
this morning.

23

NILES CESAR: Then it's off the table,  
24 okay.

25 CHAIRMAN DEMIENTIEFF: At 8:30 this  
morning, I acknowledged that it was off the table, and

1 then I used the prerogative of the chair to move  
consideration of the proposal until after we completed  
2 our work in Southcentral.

3 NILES CESAR: And I agree with Mr. Allen.  
Let's just go do something here and quit wasting  
4 everybody's time, because we know we want to count the  
animals and go on with the program.

5  
DAVE ALLEN: Mr. Chairman, I move that we  
6 defer the Regional Advisory Council's proposal until  
such time that we have an opportunity, within hopefully  
7 the next ten to 14 days, to gather more information by  
survey with regard to the moose population in the area  
8 proposed.

9 CHAIRMAN DEMIENTIEFF: We have a motion.  
Is there a second?

10  
PEGGY FOX: Second.

11  
CHAIRMAN DEMIENTIEFF: It's been moved and  
12 seconded. Discussion? Hearing none, all those in favor  
please signify by saying "aye."

13  
IN UNISON: Aye.

14  
CHAIRMAN DEMIENTIEFF: Those opposed, same  
15 sign.

16 (No response.)

17 CHAIRMAN DEMIENTIEFF: Motion carries.

18 At this time, the chair will entertain a  
motion to adopt the consent agenda items, Proposals 3,  
19 4, 16, 17, 18, 19, 20, 21, 26, 27, 35, 37, 38, 39, 41,  
42, 50, 51, 52, 53, 54, 56, 57, 59, 60, 62, and that's  
20 it.

21 JUDY GOTTLIEB: Mr. Chairman.

22 CHAIRMAN DEMIENTIEFF: Yes.

23 JUDY GOTTLIEB: I move that we adopt the  
consent agenda items that you've just listed.

24  
CHAIRMAN DEMIENTIEFF: Is there a second to  
25 the motion?



1 UNIDENTIFIED SPEAKER: Second.

2 CHAIRMAN DEMIENTIEFF: Discussion? Hearing  
none, all those in favor signify by saying "aye."

3  
4 IN UNISON: Aye.

5 CHAIRMAN DEMIENTIEFF: Those opposed, same  
sign.

6 (No response.)

7 CHAIRMAN DEMIENTIEFF: Motion carries. Is  
it 9:45 already?

8  
9 UNIDENTIFIED SPEAKER: Yes, it is.

10 CHAIRMAN DEMIENTIEFF: Okay. What we're  
going to do here -- procedurally, that completes our  
proposal consideration. What we're going to do is we're  
11 going to take a short break here, and then we're going  
to come back and we're going to start the Kenai rural  
12 request, public testimony. And even if we complete it  
this morning, we have to keep in mind that we did notice  
13 that the consideration wouldn't come up until 1:00. So  
if we took an hour's worth of testimony and completed  
14 all the testimony, we still couldn't deliberate the  
issue until 1:00 this afternoon.

15  
16 So what we're going to do is come back and  
just begin the testimony process. If we get done prior  
to noon, that's fine. If not, we will come back at 1:00  
17 and continue the testimony, at which time right after  
that we will begin to deliberate the request. Okay, so  
18 we'll take a short break here.

19 (Short recess taken.)

20 CHAIRMAN DEMIENTIEFF: Okay, we're going to  
go ahead and begin. Again, let me go over procedurally  
21 where we're at. We did send out public notice that we  
would begin the consideration of the Kenaitze Indian  
22 Tribe request for review of Kenai Peninsula nonrural  
determination.

23  
24 If we complete public testimony prior to  
noon, we will go ahead and take a break at that time.  
We will come back at 1:00, because that's the time we  
25 advertised public testimony. And at 1:00, we will ask  
if there are any additional people that wish to testify

1 on this issue. Once we exhaust public testimony, we  
will begin consideration.

2

Now, earlier this week we had a request  
3 from the Kenaitze Indian Tribe to break at 2:30, and  
which we will, in honor of that request. If we are  
4 still in public testimony at that time, at that time  
I'll make the decision on whether or not we come back  
5 this evening and complete public testimony. One way or  
the other, it's my intent to complete public testimony  
6 today. And then if we have to meet this evening, or if  
we get past 2:30, we may just go ahead and come back and  
7 do the deliberation on the request in the morning.  
We're just going to go by ear. But if we do exhaust all  
8 public testimony this morning and there's no additional  
testimony, at 1:00 we will begin deliberation. So just  
9 so everybody knows what we're dealing with.

10 And other than that, for Board members, we  
do have, once we complete the deliberation on this  
11 request, we have some reports with respect to the core  
group, staff community who will be working with the  
12 State, and also we have a report on the Regional  
Advisory Councils' appointees to add to our mix of  
13 discussions with the State. Those will be more along  
the report nature. So once we complete the Kenaitze, we  
14 still have two little items that we'll have to take care  
of, but it won't take very long. So that's our kind of  
15 road map here for the day.

16 And with that -- we still have to do all of  
our reports this afternoon, don't we? Or do we need to  
17 do that report now?

18 UNIDENTIFIED SPEAKER: (Inaudible)

19 CHAIRMAN DEMIENTIEFF: Yeah. Well, this  
is -- we notified that. We're just going to do public  
20 testimony.

21 UNIDENTIFIED SPEAKER: Right now?

22 CHAIRMAN DEMIENTIEFF: Yeah. And we will  
do -- I think what we'll do is we'll do the staff  
23 report. And who is going to do that?

24 UNIDENTIFIED SPEAKER: Rachel.

25 CHAIRMAN DEMIENTIEFF: Rachel. We're just  
going to do the staff report, and that's part of it.

1 Then we'll deviate from our normal schedule and we'll go  
2 right into public testimony. We don't do the Staff  
3 Committee recommendation or anything like that. We'll  
4 just do the report. I may ask you to do a brief  
5 synopsis of the report again at 1:00 for any people who  
6 may arrive at that time. But maybe we'll just do a  
7 brief staff report right now and then we'll begin the  
8 public testimony.

5

RACHEL MASON: Thank you, Mr. Chairman. In  
6 1998, the Kenaitze Indian Tribe requested that the  
7 Federal Subsistence Board reconsider its 1990 rural  
8 determinations and declare the entire Kenai Peninsula  
9 rural. As you know, rural determinations throughout the  
10 state are scheduled to be reviewed following the 2000  
11 census, but they may be reconsidered before that time if  
12 special circumstances are recognized by the Board.

10 And the request states that out-of-cycle  
11 review is warranted by special circumstances in the  
12 Kenai Peninsula case. These include legal and  
13 analytical errors in the original determinations, as  
14 well as new information coming from public testimony and  
15 a report prepared by UAA's Institute of Social and  
16 Economic Research, which I'll refer to as the ISER  
17 report. At its Spring 1998 and Fall 1998 meetings, the  
18 Southcentral Regional Council voted to support the  
19 Kenaitze Tribe's request. The Regional Council also  
20 conducted public hearings on this issue on the Kenai  
21 Peninsula in November 1998, and at its March 1999  
22 meeting reaffirmed its previous recommendations  
23 supporting the request.

17

The approach that's taken in the staff  
18 analysis is to examine the assertions of special  
19 circumstances in the request. First, to review the  
20 methodology that was used in the Board's 1990 rural  
21 determinations, they involved two steps: Aggregation,  
22 and categorization as rural or nonrural.

21 First, the criteria that were used for  
22 aggregation were whether 15 percent or more of the  
23 working people in a community commute from one community  
24 to another. Whether the two communities share a common  
25 school district. And whether daily or semi-daily  
shopping trips were made from one community to another.  
26 And the intent of this aggregation was to include  
27 bedroom communities that might otherwise be considered  
28 rural in the same category with nearby communities that  
29 were more clearly nonrural.

1

Following aggregation, the communities were categorized by population size. The communities with fewer than 2,500 people were presumed rural. Communities with a population between 2,500 and 7,000 could be either rural or nonrural. And those with 7,000 or more people were presumed nonrural. However, population size alone was not considered an adequate indicator of rural or nonrural status. And especially for communities falling into the middle category, further criteria were used to evaluate their rural status. These included fish and wildlife use, diversity of economy, transportation, community infrastructure, and the level of education available in a community.

8

In a letter to the chair of the Southcentral Regional Council on December 9, 1998, the Native American Rights Fund, on behalf of the Kenaitze Indian Tribe, made several assertions of special circumstances apply to the Kenai Peninsula rural determinations. These assertions can be grouped into several categories: Their assertions concerning the rural determination criteria used by the Board in 1990; the Board's application of the rural determination process; new information not available in 1990; the Board's responsibility to defer to the Regional Councils; and finally, the current situation on the Kenai Peninsula. And some of the assertions fit into more than one category.

A problem in considering these is that federal regulations give no definition of special circumstances. They imply that the special circumstances in question are significant demographic changes in the communities. And so, while the Board has no regulatory guidance for evaluating assertions of special circumstances, based on new information or past legal procedural or analytical errors, in rural determinations, these factors are used to reconsider other types of Board decisions. For example, in RFRs for the Subpart D proposals, of customary and traditional determinations.

22

In regard to the assertions that are related to the rural determination criteria used by the Board in 1990, and these are primarily legal questions, one of the assertions is that the Board's 1990 nonrural determination for the Kenai Peninsula violated the Kenaitze decision. The issue before the Kenaitze court was a narrow one: whether the State of Alaska had

1 properly defined the term "rural." And when the Federal  
2 Subsistence Board began to make rural determinations in  
3 1990, it did take into consideration the Kenaitze  
4 decision. The federal process used population as the  
5 initial screen for the determinations, rather than fish  
6 and wildlife use as the State had done.

7 And so in deciding against the State, the  
8 Kenaitze court found deference to the State  
9 inappropriate. However, federal agencies are entitled  
10 to deference, and the Secretaries acted within their  
11 authority in adopting the rural process regulations, and  
12 these regulations are therefore entitled to deference.

13 Another assertion related to the rural  
14 determination criteria is that Title VIII of ANILCA is  
15 Indian legislation and, as such, must be interpreted  
16 broadly in favor of protecting the subsistence rights of  
17 Alaska Natives.

18 Title VIII is racially neutral, and the  
19 purpose of the title is to consider the opportunity for  
20 subsistence uses by both Natives and non-Natives.  
21 Further, the Ninth Circuit Court stated in March 1999  
22 that Title VIII benefits rural Alaska residents,  
23 regardless of whether they are members of tribes. And  
24 that was in Hoonah Indian Association vs. Morrison.

25 The next category of assertions are those  
that are related to the Board's application of the rural  
determination process. And one is that the Board  
treated different areas in the state inconsistently. In  
particular, on the Kenai Peninsula the Board aggregated  
communities, whereas in other parts of the state they  
did not. And an example given in the petitioner's  
assertions is that Saxman was not combined with  
Ketchikan. But in fact, Saxman was initially aggregated  
with Ketchikan in the Board's preliminary rule  
determination, but in the final determinations Saxman  
was considered rural.

21 More broadly, the assertion of  
22 inconsistencies also relates to the fact that Sitka,  
23 Kodiak and Saxman were granted rural status, whereas the  
24 Kenai Peninsula was not. The Board changed its initial  
25 nonrural determinations for Kodiak, Sitka and Saxman on  
the basis of testimony and new information that came in  
after the initial determinations had been made.

The Board was persuaded by testimony that

1 Kodiak and Sitka are isolated island communities,  
2 unconnected by road, and there was testimony that the  
3 economies of these communities centered around  
4 commercial fishing and logging, and that the residents  
5 of these communities intensively used subsistence  
6 resources. And the Board also heard testimony that  
7 Sitka, Saxman and Kodiak were hubs of subsistence trade  
8 within their region.

9

10 In reference to Saxman, the Board was  
11 persuaded to change its determination and make Saxman  
12 rural, both by testimony and other information that  
13 Saxman was a distinct Native community separate from  
14 Ketchikan and that they relied heavily on fish and  
15 wildlife resources. No such distinctions were found for  
16 the Kenai communities that were aggregated. And on the  
17 basis of -- on the question of whether the Board erred  
18 when it changed its rural determinations for Sitka,  
19 Kodiak and Saxman, and made them rural, but let stand  
20 the Kenai Peninsula as nonrural, the only conclusion is  
21 that there was some basis in the record for the Board's  
22 decision.

23

24 Moving on to assertions related to new  
25 information that was not available in 1990, one of them  
is that the demographic and socioeconomic information  
relating to the Kenai Peninsula that is contained in the  
ISER report was not available at the time that the Board  
made its 1990 rural and nonrural decisions. Actually,  
the ISER report uses data from a mixture of years, from  
1980 through 1996, includes some new information from  
the mid 1990s, such as harvest data, employment and  
income data from some communities that was not available  
in 1990. However, there's little indication that a  
significant change in the character of the communities  
being compared has occurred since 1990, nor that the  
demographic and socioeconomic data that were used by the  
Board to make the nonrural determinations in 1990 was in  
error.

21 Another assertion brought forward is that  
22 the Regional Council has received more extensive  
23 information from a larger number of Kenai Peninsula  
24 residents now than was provided in the course of public  
25 hearings during the rural determination process in 1990.

24 Before making those 1990 determinations,  
25 there were some subsistence scoping meetings held on the  
26 Kenai Peninsula in the communities of Seward, Kenai and  
27 Homer. And these were in conjunction with the

1 Environmental Impact Statement public review process.  
2 Testimony at those meetings relevant to rural  
3 determinations included comments that roaded portions of  
4 the Kenai Peninsula should not be considered rural;  
5 statements of people who perceived themselves as  
6 subsistence users although their taking occurs under  
7 sport regulation; frustration at nonrural  
8 determinations; and the statement that there should be  
9 an appeal process and periodic reevaluation of nonrural  
10 determinations.

11 During the December 1990 board meeting at  
12 which Sitka, Saxman and Kodiak were declared rural,  
13 there was no request to add the Kenai Peninsula  
14 communities to those considered rural. The Kenaitze  
15 Tribe submitted a request for reconsideration in  
16 February 1991, and it contained some of the same  
17 assertions that were submitted in the 1998 request.

18 In the summer of 1995, public hearings were  
19 conducted in communities on the Kenai Peninsula. The  
20 focus of these hearings was the proposed customary and  
21 traditional use determinations, but many of those who  
22 testified also addressed the rural determinations. And  
23 again, there were statements that the boundaries -- that  
24 the boundaries between rural and nonrural appeared  
25 arbitrary, that the federal program's definition is  
26 flawed, and many of those who testified stated that all  
27 the portions of the Kenai Peninsula on the road system  
28 should be considered nonrural.

29 In November 1998, public hearings were  
30 conducted in Seward, Homer and Kenai to address the  
31 Kenaitze Tribe's request to make the whole Kenai  
32 Peninsula rural, and those who testified were asked to  
33 focus on special circumstances that would warrant an  
34 out-of-cycle review. From those opposed to the request,  
35 there were many of the same comments heard during the  
36 1995 meeting, hearings, and testifiers who supported the  
37 Kenaitze request told of their subsistence practices on  
38 the Kenai Peninsula or endorsed the request and  
39 resolution submitted by the petitioners.

40 In addition to their testimony at public  
41 meetings, Kenaitze tribal members brought forth  
42 information on their subsistence practices on the Kenai,  
43 both at the March 1998 and the March 1999 Southcentral  
44 Regional Council meetings.

45 Clearly, there has been much more public

1 input now from the residents of the Kenai Peninsula than  
2 was available at the time that the Board made its rural  
3 determinations. However, not all of the recent public  
4 testimony has supported a rural determination for the  
5 entire Kenai Peninsula, and there's little evidence from  
6 the testimony that the Kenai Peninsula has a more rural  
7 character now than it did in 1990.

8 Another category of assertions refers to  
9 the Board's responsibility to defer to the Regional  
10 Councils. One statement was that the Board's initial  
11 rural determinations were made without input from the  
12 Southcentral Regional Advisory Council, which had not  
13 yet been established. Another is that the Regional  
14 Council's recommendation is entitled to deference under  
15 Title VIII of ANILCA.

16 Under ANILCA, there is a system of  
17 deference to Regional Council recommendations on matters  
18 concerning subsistence take. For matters concerning  
19 rural designations, the decision rests with the  
20 Secretary of the Interior, who has delegated that  
21 authority to the Board. And although deference to the  
22 Regional Councils on rural designations is not mandated  
23 by Section 805, the Board does rely on Regional Council  
24 advice on all matters of subsistence, and will seek  
25 Regional Council involvement in making rural  
determinations after the 2000 census data become  
available. And all of the ten Regional Councils were  
established after the 1990 rural determinations were  
made.

17 Finally, there are some assertions that are  
18 related to the current situation on the Kenai Peninsula.  
19 One is that the rural determinations have been divisive.  
20 And also that the time involved in waiting for the 2000  
21 census data to be available, and for the public process  
22 to take place, is in itself a special circumstance. The  
23 members of the Kenaitze Tribe who have testified at  
24 Regional Council meetings and at public hearings have  
25 made clear that they have waited a long time for their  
subsistence way of life to be recognized. For example,  
one testifier stated that there have been disruptions in  
intergenerational transmission of subsistence knowledge  
and skills.

24 These two assertions, that they've been  
25 divisive and that the waiting time is itself a special  
circumstance, must clearly be acknowledged. Although,  
again, because special circumstances are not defined in



1 ANILCA, it's not possible to determine whether the  
2 requested assertions constitute sufficient special  
3 circumstances to warrant an out-of-cycle rural  
4 determination for all the communities on the Kenai  
5 Peninsula.

6 The preliminary -- on the question of  
7 whether there could be an out-of-cycle review conducted  
8 with the data that's available now, preliminary  
9 community population data that's collected in the year  
10 2000 census will be available in late 2000 or perhaps  
11 2001. Other demographic information collected by the  
12 census and used in the rural determination process may  
13 not be available until a year later, or more.

14 Presently, there are population data  
15 available for all the Kenai Peninsula communities and  
16 the areas that are counted in the 1990 census. The  
17 availability and the quality of current demographic data  
18 suggests that it would be difficult to conduct an  
19 analysis and a reassessment of the Kenai Peninsula's  
20 rural status, including a comparative analysis of  
21 Kodiak, Sitka and Saxman, without benefit of the 2000  
22 census.

23 But for consistency in determinations, it  
24 is important that the same types of data are used for  
25 all communities and areas. And so, in considering  
special circumstances, the consequences of delay for  
another two or more years must be weighed against the  
benefits of waiting for the census data to be able to  
make consistent decisions during the statewide review of  
rural determinations.

And one more. In conclusion, the  
assertions about the Board's application of its own  
criteria for aggregation do raise questions about the  
use of this methodology and its application statewide.  
Specifically, the ISER report shows that on the Kenai  
Peninsula, appropriate information was lacking to apply  
to the three factors used to aggregate communities:  
commuting from work; sharing a common school district;  
and daily shopping trips. So it may be -- given the  
proximity of the availability of the 2000 census data,  
at this point it may be appropriate to review the  
Board's methodology for statewide rural determinations  
rather than to conduct an out-of-cycle review. Thank  
you.

25

CHAIRMAN DEMIENTIEFF: Thank you. I forgot

1 one more thing, before we call on our first person  
requesting to testify. This matter has already had  
2 Regional Council testimony, per -- basically, the Board  
had asked that the Regional Council do it. So this is a  
3 hearing of the Federal Subsistence Board. Therefore, if  
there are any questions to be asked of people who are  
4 testifying, it will come from Board members only. The  
Regional Councils will still have the opportunity to  
5 comment, as we deliberate, when the deliberations begin.  
But during the public testimony, Board members only to  
6 ask any questions that they may wish to ask.

7 Rita Smogge is the first person signed up  
to testify. And also, as you begin the testifying, I  
8 ask you to be as brief as possible, but I will be  
flexible on that. If there are certain people who  
9 are -- who have, you know, a lot to offer. I know you  
have some expert witnesses lined up, attorneys and these  
10 kind of things. While I don't expect long filibusters,  
I will ask you to be as brief as possible. Yes, ma'am.

11  
RITA SMOGGE: Thank you. My name is Rita  
12 Smogge, I'm the executive director for the Kenaitze  
Indian Tribe, and I'm also a tribal member. If I can, I  
13 would like to read a resolution from the Kenai Native  
association first. This is Resolution 99-05.

14  
Whereas, the Kenai Native Association, Inc.  
15 is a local Alaskan profit corporation located at Kenai,  
established in accordance with the Alaska Native Claims  
16 Settlement Act in '97 -- 1971, excuse me. Public Law  
92-203; and

17  
Whereas, the Kenai Native Association, Inc.  
18 has real and permanent concerns for the collective and  
individual economic and social needs of its 570  
19 shareholders, a majority of which reside in the Kenai  
Peninsula Borough; and

20  
Whereas, the Kenai -- KNA Board of  
21 Directors considers the Kenai Peninsula to be a rural  
area by any reasonable definitions of the term; and

22  
Now therefore be it resolved that the Board  
23 of Directors of the Kenai Native Association fully  
supports and endorses Title VIII of ANILCA, which grants  
24 rural preference to the citizens of the Kenai Peninsula  
Borough, thereby making them eligible to practice their  
25 indigenous, customary and traditional subsistence way of  
life. Thank you. That's signed by Richard Segura,

1 President, and Carol A. Segura, Secretary. Thank you.

2 As I stated before, my name is Rita Smogge.  
I would like to urge the Federal Subsistence Board to  
3 reconsider assigning nonrural determination, to comply  
with Title VIII of ANILCA. Since 1975, the tribe has  
4 been asking for it to reconsider its rural/nonrural  
determinations. It's been a long hard battle and our  
5 people have become very weary and disillusioned with the  
entire process. Although the law is clearly on their  
6 side, the burden of proof continues to be placed on the  
tribe.

7  
The rural/nonrural issue is hard to grasp  
8 for many of our elders. They don't understand why their  
subsistence rights were taken away because a Board  
9 somewhere classified their traditional homeland as  
nonrural. Did this decision arbitrarily eliminate their  
10 need to participate in traditional activities? Of  
course not. Many residents, Native and non-Native  
11 alike, are heavily dependent on a subsistence way of  
life, and the tribe believes that there's sufficient  
12 resources to take care of all our needs.

13 Admittedly, the population of the  
Kenai-Soldotna area has increased since the discovery of  
14 oil and gas, yet the very characteristics of these towns  
remain rural. Employment is seasonal in nature,  
15 primarily tied to the fishing industry. Unfortunately,  
several of the local canneries were forced to close this  
16 past year because the fishing fleets were unable to fish  
their normal fishing grounds due to restrictions imposed  
17 by Fish & Game to corridors, thereby severely limiting  
their catch.

18  
The entire Kenai Peninsula is sparsely  
19 populated and many areas are not served by city water or  
sewer. For example, the tribe's administrative  
20 headquarters is located approximately six miles from  
downtown Kenai and the Kenai airport. The 50-acre  
21 Native allotment parcel has no access at this time to  
city sewer or water. And from what we understand, the  
22 City of Kenai doesn't have plans to install these  
facilities for another two years. Also, wildlife, such  
23 as moose, caribou, eagles, rabbits, sandhill cranes, and  
sometimes bear, can be seen roaming the property. There  
24 is no mass transit system in the Kenai Peninsula  
Borough. And numerous federal agencies consider the  
25 Kenai Peninsula to be rural.

1       Although special circumstances has never  
2       been defined, I submit the following points for your  
3       consideration. The initial determinations were made  
4       without input from the Regional Advisory Council. Since  
5       then, the Regional Advisory Council has twice  
6       recommended that the communities on the Kenai Peninsula  
7       be reclassified as rural. The Board's original  
8       determination was made without regard to the fact that  
9       Title VIII of ANILCA is Indian legislation and, as such,  
10      it must be interpreted broadly in favor of protecting  
11      the subsistence rights of the Kenaitze.

12      And I have one last comment, and it's on  
13      the Interagency Staff Committee recommendation. The  
14      staff of the agencies have admitted that procedural  
15      errors were made in making the Kenai Peninsula nonrural  
16      determination. However, they recommend that this Board  
17      should wait until after they establish a methodology for  
18      rural determination to revisit the Kenai Peninsula  
19      determination. That is not fair to the tribe. We  
20      should be judged by the 1990 standards, like the rest of  
21      the communities in Alaska were. We have already been  
22      denied our subsistence rights guaranteed in federal law,  
23      and it is the Board's obligation to protect those  
24      rights. We should not be expected to wait another four  
25      or five years. Thank you.

26      CHAIRMAN DEMIENTIEFF: Thank you. Are  
27      there any questions from Board members? Thank you very  
28      much. Carol Daniel.

29      CAROL DANIEL: Thank you, Mr. Chairman.

30      CHAIRMAN DEMIENTIEFF: Wait a minute, he's  
31      got to -- okay.

32      CAROL DANIEL: Thank you, Mr. Chairman.  
33      The issue before the Board is whether special  
34      circumstances exist to warrant this Board's  
35      reconsideration of its 1991 rural determination with  
36      respect to communities on the Kenai Peninsula. Is it  
37      working?

38      UNIDENTIFIED SPEAKER: (Inaudible.)

39      CAROL DANIEL: My name is Carol Daniel and  
40      I'm an attorney. I represent the Kenaitze Indian Tribe  
41      and I've been working with the Kenaitze Indian Tribe  
42      since the mid 1980s on the rural issue. The issue  
43      before the Board today is whether special circumstances

1 exist to revisit the Board's 1991 nonrural  
2 determinations with respect to the communities on the  
3 Kenai Peninsula.

4 Before addressing special circumstances, I  
5 would like to address briefly, by way of background, how  
6 we got here. The issue came before this Board initially  
7 as a result of a recommendation from the Southcentral  
8 Regional Council following eight public hearings that  
9 were held on the Kenai Peninsula in 1995, to gather  
10 testimony on the customary and traditional use  
11 determinations that were being considered for the Kenai  
12 Peninsula.

13 After those hearings, the Advisory Council  
14 concluded that the entire Kenai Peninsula should be  
15 considered rural. The Council spoke of the  
16 divisiveness of the issue on the Kenai Peninsula, and  
17 the mistakes that had been made in aggregating  
18 communities in the initial process, and the importance  
19 of hunting and fishing to the people, all residents on  
20 the peninsula.

21 When the Board met the following January,  
22 it kicked the issue back to the Regional Council, with  
23 the suggestion that the Council would have to hold  
24 hearings on whether or not the Kenai Peninsula nonrural  
25 determination should be revisited. Having just held  
26 public hearings that were very divisive on the Kenai  
27 Peninsula, the Regional Council decided -- was  
28 reluctant, understandably, to go back and hold hearings  
29 so soon after they had held hearings on the customary  
30 and traditional use determinations.

31 It was primarily for that reason that the  
32 Southcentral Regional Council, at its meeting in Cordova  
33 in February of 1996, decided to table the issue. It was  
34 at that point that the Kenaitze Indian Tribe consulted  
35 with and hired Dr. Kruse and commissioned the ISER  
36 report. And following that report, in February of 1999,  
37 the Kenaitze Indian Tribe requested that the  
38 Southcentral Regional Council bring the matter back --  
39 to take the matter off the table and bring it back to  
40 the Regional Council. And it was -- the Regional  
41 Council agreed to do that. It heard testimony at its  
42 Glennallen meeting in March of 1996; and following that  
43 meeting, for a second time recommended to this Board  
44 that the Board revisit its 1991 nonrural determinations  
45 on the Kenai Peninsula and declare all of the  
46 communities on the peninsula rural.

1

2 The Board at that point again advised the  
3 Regional Council that it needed to hold hearings on the  
4 Kenai Peninsula and to set forth specific special  
5 circumstances justifying the Board's taking this matter  
6 up out of cycle. The Board agreed to hold the hearings.  
7 Hearings were held on the Kenai Peninsula in November of  
8 1998; and following those hearings, the Board again -- I  
9 mean the Regional Council again recommended to this  
10 Board that it revisit the 1991 rural determinations  
11 based on special circumstances.

12 The special circumstances that I would like  
13 to highlight are, first of all, the Regional Council  
14 recommendation itself. The original determination was  
15 made without input from the Regional Advisory Council.  
16 Since then, the Council has three times recommended that  
17 the Board revisit this issue. The first time in 1995;  
18 again in 1998 following public testimony, in  
19 consideration of the 1998 ISER report; and finally, most  
20 recently, following hearings on the Kenai Peninsula, the  
21 Regional Advisory Council recommended at its March 1999  
22 meeting that the Board find special circumstances to  
23 reconsider the nonrural determinations on the Kenai  
24 Peninsula.

25 These recommendations were not made in a  
vacuum. They were made after numerous hearings on the  
Kenai Peninsula and after much public input. The  
recommendations to classify the Kenai Peninsula as rural  
is supported by substantial evidence, and the Regional  
Council's recommendation is due deference. But the  
Board doesn't even have to reach that issue today. The  
issue is whether special circumstances exist, and the  
recommendation from the Regional Council is that they  
do.

19

20 With all due respect to the staff report,  
21 which suggests that deference to the Regional Council  
22 recommendation is not required in this situation unless  
23 it deals with subsistence take, I would submit that they  
24 cite no authority for that proposition. And  
25 furthermore, the Board had this issue before it in 1995  
and deferred the issue, or submitted the issue back to  
the Regional Council, Advisory Council on two occasions  
since 1995, suggesting that the Regional Council hold  
hearings. If that process was -- if the Regional  
Council's recommendation is not required, then why defer  
the decision for three years following the time that it  
initially came before the Board?

1

2 In any event, we would suggest that the  
3 recommendation of the Regional Advisory Council does  
4 deal with subsistence take in the most fundamental way.  
5 It involves the total denial of the subsistence  
6 opportunity to people who live on the Kenai Peninsula to  
7 engage in any subsistence take.

5

6 In terms of the Board's initial  
7 determination, we still submit that it was based  
8 primarily on the State's nonrural determinations which  
9 were expressly rejected by the Kenaitze case -- by the  
10 Ninth Circuit in the Kenaitze case. The temporary  
11 subsistence management regulations for public lands in  
12 Alaska were published in June of 1990, and at that point  
13 the Board simply adopted the State's rural, old  
14 rural/nonrural determinations.

10

11 The Board was then given a period, a very  
12 short period, until the end of the year, to adopt its  
13 own designation for rural and nonrural designations in  
14 the state. As the staff report acknowledged, this  
15 process had to be expedited in order to quickly  
16 establish the federal program. In fact, the hearings  
17 that were held on the Kenai Peninsula only -- did not  
18 focus on the rural/nonrural issue. It was a scope --  
19 there were scoping hearings that focused on the  
20 proposed -- the Environmental Impact Statement. So it  
21 covered all the issues for the federal program.

16

17 In the rush to establish that program, it's  
18 apparent that what the Board did was it did not make its  
19 decision in accordance with the Kenaitze case. While  
20 the Board acknowledges that the term "rural" refers to  
21 areas that are sparsely populated, it went on to deny  
22 any application of population density. And the only way  
23 it used population, total population of communities, was  
24 not as an initial screen, but to indicate or to  
25 establish a presumption. In other words, if the  
26 community had a population of less than 2,500, it was  
27 presumed to be rural; and if it had a population in  
28 excess of 7,000, it was presumed to be nonrural.

22

23 But those presumptions proved meaningless  
24 when communities were then -- were aggregated prior to  
25 applying any kind of population screening. By  
26 aggregating the communities on the Kenai Peninsula in  
27 terms of criteria that the staff has conceded there was  
28 no information, no reliable information, on which to  
29 make those decisions, every community -- or almost every

1 community on the Kenai Peninsula was denied the right to  
the subsistence priority. Even though no community on  
2 the Kenai Peninsula in 1991 had a population in excess  
of 7,000 people. In fact, there were some communities  
3 as small as 200 people, or less, that were aggregated  
with larger communities and then denied the rural  
4 priority.

5 So population was not used as an initial  
screening device. It proved to be meaningless when  
6 communities were aggregated. The staff's response to  
this argument is simply that the federal agency is  
7 entitled to deference in its interpretation of rural. I  
would submit that that deference does not apply in this  
8 case since the agency chose to ignore the direction  
given by the Court of Appeals in the Kenaitze case.  
9

Deference is due only when the agency  
10 interpretation is reasonable. In this case, its  
conclusion with respect to the Kenai Peninsula  
11 communities was not reasonable and did not comport  
with -- was not supported by the facts. It's obvious  
12 that in determining the factor -- in using the factors  
to determine whether communities that had been  
13 aggregated was not whether they were sparsely populated,  
but how they scored on a list of indicators, which for  
14 all practical purposes were the same as the ones the  
State used, which the Ninth Circuit Court of Appeals  
15 invalidated as being inconsistent with Title VIII of  
ANILCA.  
16

Turning to the Title VIII itself, we still  
17 contend that the Board's original determination was made  
without reference to the fact that Title VIII is Indian  
18 legislation. Now, the staff report points to a recent  
case, Hoonah vs. -- Hoonah Indian Association vs.  
19 Morrison, which is a recent case that held that Title  
VIII is not Indian law. That case is directly contrary  
20 to a previous case that held that Title VIII is Indian  
law. So it's incorrect to say that there's precedent in  
21 the Ninth Circuit that invalidates that proposition.  
There's also precedent in the Ninth Circuit that  
22 supports that proposition. And the plaintiffs in the  
Hoonah case are petitioning the Ninth Circuit for  
23 rehearing on that issue.

24 But that aside, the fact remains that Title  
VIII of ANILCA was remedial legislation. It was passed  
25 for the benefit of Native and non-Native subsistence  
users, and Congress intended the statute to benefit



1 those subsistence users, and the statute should be  
2 interpreted broadly to accomplish Congress's intent in  
3 passing Title VIII of ANILCA.

4 It certainly is entitled to as broad a  
5 reading as it has gotten in other federal programs. The  
6 Kenai Peninsula is rural for just about every federal  
7 program available to rural communities, from everything  
8 from fire protection, economic development, housing,  
9 rural utilities, and weatherization funds. So Title  
10 VIII of ANILCA should be at least given that broad an  
11 interpretation, since it was Congress's intent to allow  
12 Native and non-Native subsistence users in Alaska to  
13 choose whether or not to continue their subsistence  
14 lifestyle.

15 In terms of new information, the staff  
16 report points out that the ISER report provided new  
17 information that was not available at the time the  
18 initial determinations were made. And in addition,  
19 there has clearly been more input from the public since  
20 the initial determination. A number of hearings have  
21 been held on the Kenai Peninsula, in 1995 and again this  
22 past fall.

23 Now, the staff points to the fact that this  
24 testimony -- it discounts a lot of the testimony by  
25 saying that there were many who testified that did not  
26 support a nonrural -- I mean a rural designation for the  
27 Kenai Peninsula. But I think the Board needs to  
28 remember that this isn't a popularity contest. This has  
29 always been a contentious issue on the Kenai Peninsula.  
30 It has been since 1978, and it will be after the year  
31 2000 census information becomes available. It's not a  
32 popularity contest as to how many people testify they  
33 don't like rural, they don't agree with the Title VIII  
34 of ANILCA, they think federal management will be  
35 devastating to the communities on the Kenai Peninsula.  
36 That's not the issue. The issue is whether the  
37 communities on the Kenai Peninsula were treated the same  
38 as communities in the rest of the state, and whether  
39 they met the criteria that the Board used in determining  
40 rural and nonrural when it made its determination in  
41 1991.

42 Finally, there were errors that were made  
43 in the original analysis that affected the way the  
44 communities were aggregated for the Board's  
45 rural/nonrural determinations in 1991. The Staff  
46 Committee acknowledges there were inconsistencies, not

1 only in the way the communities were aggregated, but  
2 also in the way the socioeconomic characteristics were  
3 applied in making those determinations.

4 The communities on the Kenai Peninsula were  
5 treated differently. I don't think that anybody here  
6 can say that they weren't. And to deny those  
7 communities the subsistence opportunity for another two  
8 or three years is a serious problem. I mean, it's a  
9 denial of their rights under federal law, it's a denial  
10 of equal protection, and due process. And for what  
11 reason? There are only three that are given in terms of  
12 delaying or deferring the Board's reconsideration of its  
13 1991 determinations.

14 One is basically for the convenience of the  
15 Board. The fact that it would be inconvenient to  
16 reconsider those determinations now. But inconvenience  
17 or reluctance -- the other reason is reluctance for the  
18 fact that it's a controversial issue. But reluctance  
19 for political reasons or bureaucratic inconvenience are  
20 not valid reasons to deny a remedy to the Kenaitze  
21 Indian Tribe, who are entitled to the same benefits  
22 under federal law as the rest of the subsistence users  
23 in this state.

24 The Kenaitze -- the remedy is not to say  
25 that you have to wait, two, three, four more years,  
26 before you'll get the benefits of federal law. This  
27 Board has the responsibility to correct its errors and  
28 to treat the communities on the Kenai Peninsula as it  
29 did similarly situated communities in Sitka, Kodiak and  
30 Saxman, for example. The Kenaitze and others who live  
31 on the Kenai Peninsula should not be denied those rights  
32 under federal law for another three or four years.

33 Now, that doesn't mean that the Board  
34 cannot at the same time reevaluate the criteria that it  
35 used to make its 1991 rural determinations. We strongly  
36 agree that that needs -- that's an issue that needs to  
37 be revisited. But that's a separate issue. You don't  
38 have to defer reconsideration of mistakes that were made  
39 in 1990 in setting up a new methodology that will be  
40 used after the 2000 census. That's something that can  
41 be taken up simultaneously and considered at the same  
42 time.

43 Everyone agrees that there were  
44 inconsistencies in the methodology used to aggregate the  
45 communities, and inconsistencies in applying the

1 socioeconomic characteristics. The Kenaitze have  
2 already waited nine years to see this corrected, and  
3 there's just no excuse to delay this matter for another  
4 three or four years. It needs to be dealt with now.

5  
6 In terms of waiting for the latest figures,  
7 I would submit that the ISER report used the latest  
8 demographic and socioeconomic information that was  
9 available in all of those categories. And as the  
10 Subsistence Staff Committee report suggests, there was  
11 not a lot of difference between the information in 1990  
12 and the information that's available now. So I think  
13 the Board has an obligation to use the information  
14 that's available, the best available information, or the  
15 information that was available in 1990, and to reassess  
16 how it applied the rural/nonrural designations on the  
17 Kenai Peninsula.

18 I guess in conclusion, I know this is a  
19 difficult issue for the Board. It's always been a  
20 difficult issue when it's come up before the State  
21 Board, and it's been difficult for the Regional Council,  
22 Advisory Council. But we have to put the politics and  
23 the controversial aspect of this aside and look at Title  
24 VIII of ANILCA and what's required. The Kenai  
25 Peninsula, if it's viewed in any reasonable fashion, is  
26 a rural place. The largest communities are comparable  
27 to those of Sitka or Kodiak, and the smaller communities  
28 are comparable to smaller communities all over this  
29 state, on the road system and off. Special  
30 circumstances exist, and fundamental fairness should  
31 guide the Board's decision on this. It's not a remedy  
32 to ask people to live with the mistakes that were made  
33 in 1991 until new methodology or new information is  
34 available from the census. Thank you, Mr. Chairman.

35 CHAIRMAN DEMIENTIEFF: Thank you. Are  
36 there any questions from Board members? Sandy.  
37

38 SANDY RABINOWITCH: About midway through  
39 your testimony you made reference to a case from the  
40 Ninth Circuit that suggests that ANILCA is Indian  
41 legislation. Can you either cite that or look it up and  
42 write it down?  
43

44 CAROL DANIEL: It's cited in our letter  
45 to --

46 SANDY RABINOWITCH: Okay.

1 CAROL DANIEL: -- the Board. It's the  
2 Gambell case, Native village of Gambell.

3 SANDY RABINOWITCH: Okay.

4 CAROL DANIEL: And I can provide you with  
5 the full cite after, after my testimony.

6 SANDY RABINOWITCH: Okay, thank you.

7 CHAIRMAN DEMIENTIEFF: Any other questions?  
8 Dave.

9 DAVE ALLEN: Yes, Mr. Chairman. Carol,  
10 during your testimony you several times made the point  
11 that it's been identified that there may be some  
12 inconsistencies in the way the original decisions were  
13 made. And these inconsistencies did not just impact the  
14 Kenai, but they potentially impacted decisions that  
15 affected other communities as well. Is that an accurate  
16 characterization of what you said?

17 CAROL DANIEL: That could be. We are  
18 asking for a reconsideration of the communities on the  
19 Kenai Peninsula, and I have not looked at how those  
20 criteria were applied to other parts of the state. The  
21 ISER report made comparisons between communities that  
22 were similarly situated, and concluded that the Kenai  
23 communities were treated differently.

24 DAVE ALLEN: And I realize that that is  
25 your proposal here, but I would just ask your opinion  
26 anyway, given the fact that, you know, it's been pointed  
27 out that there may be several inconsistencies in the way  
28 that those decisions were made. Would you care to  
29 venture an opinion as to the appropriateness of the  
30 Board, if it were to decide to accept this as an  
31 out-of-cycle process, should we look beyond the Kenai in  
32 the application of those previous decisions? In order  
33 to be consistent.

34 CAROL DANIEL: My opinion -- I guess my  
35 opinion on that is that the Kenaitze are the only --  
36 they're the ones that have brought the issue to the  
37 Board, and that is what the Board has to deal with in  
38 this instance. And since the statewide review is coming  
39 up and nobody else has brought an issue before the  
40 Board, making the same claim, that I'm not convinced  
41 that the Board has to undergo a statewide review of all  
42 the communities under the 1990 standards.

1

I think that the federal regulations  
2 provide a process for people to come to the Board and  
ask that decisions that were made in 1991 be  
3 reconsidered based on special circumstances. And I  
think one of the special circumstances would be that the  
4 Kenaitze have been petitioning this Board, in support of  
the Southcentral Regional Advisory Council's  
5 determination in 1995, that mistakes were made and the  
Board should revisit those determinations made on the  
6 Kenai Peninsula. So I guess, no, I don't think you have  
to address it statewide.

7

DAVE ALLEN: Okay. My point wasn't  
8 statewide. It was, again, those communities that were  
pointed out as comparison, but I assume your answer  
9 would be the same?

10 CAROL DANIEL: Yes.

11 DAVE ALLEN: Okay, thank you.

12 CHAIRMAN DEMIENTIEFF: Any other questions?  
Thank you very much. Lare Aschenbrenner.

13

LARE ASCHENBRENNER: Carol covered all of  
14 the issues excellently. I just have one additional  
thing I'd like to comment on, and I just would like to  
15 say that we want to ask this Board to focus on the  
dissenting report of Fish and Wildlife. The very fact  
16 that there is a dissenting report is significant because  
they're infrequent. The dissenting report in essence  
17 says it all. It says the 1990 determinations are  
seriously flawed and must be reconsidered. It says, no  
18 delay for 13 years or more, quote, merely because of,  
for bureaucratic convenience, unquote.

19

It says, no denial of subsistence for  
20 another three or four years, not one or two. Let's get  
these -- the time line straight. It's going to be at  
21 least two and a half, or three or four. And the  
dissenting report says, no continued denial of equal  
22 protection for the Kenaitze for another four years.  
Right now, and for the last nine years, they've been  
23 treated differently than similarly situated communities.  
In other words, those other communities have priority  
24 subsistence rights, and they don't. And the dissenting  
report says that's a violation of equal protection. And  
25 it is.

1           The very march that you graciously are  
2   recessing for this afternoon, the whole purpose of it is  
3   to protest the failure to implement ANILCA. That is the  
4   primary purpose of the march, for the past nine years.  
5   This is a golden opportunity for this Federal Board to  
6   demonstrate its difference between the Alaska  
7   Legislature and take a small but significant step in the  
8   right direction. No more delay of ANILCA. Thank you.

9           CHAIRMAN DEMIENTIEFF: Thank you, Lare.  
10   Are there any questions of Mr. Aschenbrenner? Thank you  
11   very much. Mary Lou Bottorff.

12           MARY LOU BOTTORFF: For the record, it is  
13   Bottorff.

14           CHAIRMAN DEMIENTIEFF: I promise to use my  
15   glasses when I look at these from now on.

16           MARY LOU BOTTORFF: My name is Mary Lou  
17   Bottorff, I'm a Kenaitze tribal member. I spoke at the  
18   last testimony, and today I'm introducing my  
19   granddaughter to speak, Nicole Harmon. I have not  
20   raised her since she was 2, but she's been in and out of  
21   my care since then. And I would like to have her speak  
22   to the Board. Thank you.

23           NICOLE HARMON: Hi, my name is Nicole  
24   Harmon. I'm 13 years old and I've lived on subsistence  
25   food all my life. I know what types of greens and  
26   berries to pick and what seasons to pick them in and how  
27   to prepare them. I know the difference between male and  
28   female fish. I know how to cut them with an ulu. And  
29   I've cut traditional foods for the Circumpolar  
30   Conference held in Nome three years ago. The foods  
31   consisted of cooked walrus meat; walrus oogruk, which is  
32   the hide and blubber. Also, I dry and smoke fish of all  
33   types for my consumption. My grandmother, Mary Lou  
34   Bottorff, has taken me in all seasons to teach me what  
35   types of foods is available in those times. At my house  
36   in Soldotna I have my own personal freezer in which I  
37   keep traditional foods that my cousin Jacqueline and I  
38   like to eat. Every once in a while after school, I go  
39   to my freezer to eat things like fish and muktuk.

40           When I get older and have kids, I will pass  
41   on my knowledge about subsistence. I will teach them  
42   how to do things in a subsistence way. I would like my  
43   children to grow up without having to worry about people  
44   taking their freedom to be who they are. I think that

1 no one should have taken away the subsistence rights.  
If you'd please listen to what the Native people have to  
2 say about this, then you will get a real answer. Please  
consider what I said about rural subsistence. Thank you  
3 very much for having me here today.

4 CHAIRMAN DEMIENTIEFF: And I thank you.  
Are there any questions? Thank you very much. Okay, we  
5 have a request for two people to testify together.  
Bernadine Atchison and Jacqueline Comeaux.

6  
BERNADINE ATCHISON: Thank you for inviting  
7 me to testify today. My name is Bernadine Atchison, a  
Dena'ina of the Kenai Peninsula and a Kenaitze tribal  
8 member. I want to go on record stating that no one  
person, entity or organization has my permission or the  
9 right to represent me without my prior knowledge or  
consent. I am testifying on the special circumstances  
10 for subsistence on the Kenai Peninsula. Taken into  
consideration of the rest of Alaska as the choice is  
11 made for this area will have an impact on all Alaskan  
indigenous people.

12  
The issue of subsistence is more than  
13 determining if we are urban or rural. It is a human  
right. Special circumstances. That means different  
14 from others, unique, exceptional and extraordinary. A  
fact or an event. Conditions surrounding and affecting  
15 a person. Subsistence is unique and an exceptional  
circumstance to the indigenous people of Alaska and has  
16 been ever since the beginning of time. For the last 200  
years, subsistence has been a mechanism to control and  
17 dominate the well-being of the indigenous people. Today  
the Alaska Natives have the highest disease, poverty,  
18 unemployment, welfare, mental health, alcoholism and  
suicides than any other ethnic group in the United  
19 States.

20 However, our health, mental and spiritual  
well-being, is the result of our genetics. We know that  
21 subsistence is essential to our existence. The special  
circumstance is 200 years is long enough. Subsistence  
22 is not a political issue. It is not whether we are  
urban or rural, nor is it something to be viewed as a  
23 financial gain for select groups. Subsistence is the  
right to exist. It is an inherent right.

24  
The rights are protected by laws, treaties,  
25 proclamations, and the Constitution of Alaska, which  
reads in Article 12, Section 12: The state of Alaska

1 and its people forever -- which means eternity --  
2 disclaim all right or title in or to any property,  
3 including fishing rights, the right or title to which  
4 made be held by or for any Indian, Eskimo or Aleut.

5  
6 The special circumstances are the  
7 insensitive regulations that are put in place that  
8 undermine the laws and restricts our rights to customary  
9 and traditional uses to sustain life.

10  
11 Providing food for sustenance requires  
12 health of our environment. Ten years after the  
13 devastating Exxon oil spill, water life, plant life and  
14 mammals have not recovered, and may not in my lifetime,  
15 if ever. In the Cook Inlet, there are less belugas  
16 returning each year because of the extraordinary  
17 decrease in the salmon, due to the impact caused by oil  
18 spills, factory-trawlers and environmental pollution.

19  
20 The special circumstance is subsistence  
21 users protect the environment. We consider the effect  
22 it will have on those who are not born yet and those --  
23 and that is the next seven generations.

24  
25 I want to go on record that my basic sacred  
26 fundamental human rights are not negotiable. I am proud  
27 today to introduce my daughter, Jacqueline Comeaux, a  
28 Dena'ina and a Kenaitze member. It is by her request  
29 that she is speaking and addressing this board today.  
30 Thank you.

31  
32 JACQUELINE COMEAUX: Hello. My name is  
33 Jacqueline Comeaux. I started fishing when I was a  
34 baby. My mom took some pictures of me, and we were  
35 fishing with a net on Cook Inlet beach. That was ten  
36 years ago. I do not waste any of the subsistence food  
37 or the berries and plants we pick. I do -- I do it to  
38 gather food for my family and for their health and for  
39 the cold winter months. I have learned how to respect  
40 the earth and all the living plants and animals.  
41 Subsistence is represented on the flag of the Kenaitze  
42 Nation. Mountains symbolize the strength and endurance  
43 and steadfastness of the Kenaitze people. The splashing  
44 salmon depicts their spirit. The river means forever.  
45 And the snowshoes portray the fact that -- the snowshoes  
46 portray the fact that our people continue to walk with  
47 assurity on our earth. This is how I feel about  
48 subsistence. Thank you for your time.

49  
50 CHAIRMAN DEMIENTIEFF: Thank you both very



1 much. Helene Hatfield, maybe. I'm sorry.

2 HELENE HATFIELD: Hello. My name is Helene  
3 Hatfield. I am a lifelong resident of Kenai. For  
4 generation after generation my family is from Kenai. I  
5 have been raised and lived on fish all my life.

6 There are things that have stayed the same  
7 on the Kenai Peninsula that continue to be rural. Of  
8 these aspects in the Kenai Peninsula are work in the  
9 area is very seasonal. Many people can only work during  
10 the summer, with commercial and sports fishing jobs or  
11 tourism jobs. Unemployment takes a large leap every  
12 fall and begins to taper off again in the spring when  
13 jobs start to open up. People travel long distance to  
14 work, some to the North Slope, and they are gone  
15 anywhere from two to four, sometimes six weeks at a  
16 time. Some drive two to three hours round trip every  
17 day, five days a week, to get to these jobs.

18 Some people who want a higher education,  
19 like myself, have to go to other parts of the states.  
20 Some even have to move away for maybe four to six years.  
21 My husband went to Fairbanks to get a job logging when  
22 we were done logging on Montague Island. And we logged  
23 there for 12 years. He was killed in a car accident.  
24 And I wanted to be a registered nurse. I loved nursing,  
25 and been in it all my life. And being the sole support  
26 of my child, my two children, I dismissed the option of  
27 becoming an RN, because it took me three to four years  
28 and I'd have to leave home to do it. So I took the  
29 option and took the nurse's assistance training instead.  
30 So I had to come to Anchorage, leave my kids for five  
31 and a half months, come to Anchorage. And I put in 800  
32 hours, 40 hours a week, for five months, through snow  
33 slides, rain or shine. In Alaska, you name it, we got  
34 it. Because I know my kids didn't want me to be away  
35 that long, and I didn't want to be away from my family  
36 either.

37 The Kenai Peninsula receives several grants  
38 in the district, as well as Homer Electric Association,  
39 HUD housing, which is one of the requirements being in a  
40 rural area. The grants have traditionally been awarded  
41 to organizations and agencies as well as small  
42 businesses, block grants and HUD subsidies, just to name  
43 a few.

44 As a Native person, our family has relied  
45 on fish and game for survival for generations. It is a

1 part of my ancestry that I want to pass on to my future  
2 generation as well. I sincerely hope this information  
3 is helpful in your decision to having the Kenai  
4 Peninsula considered rural once and for all. Thank you.

5 CHAIRMAN DEMIENTIEFF: Thank you. Any  
6 questions? Thank you. Amanda Sonju.

7 AMANDA SONJU: Hello, my name is Amanda  
8 Sonju. I've lived on the Kenai Peninsula for three  
9 years. Where I live is on a road connected to Soldotna.  
10 It's 18 miles long. I live in a 12 by 14 white wall  
tent with no running water, no electricity, no phone.  
And in the springtime during breakup, we have to walk in  
for a month. In last summer, I have seen a brown -- a  
grizzly, brown bear, and a black bear. I'm from  
Nondalton, which is a Dena'ina village across the inlet.  
Moving to the Kenai Peninsula has made me feel that I am  
closer to my own people.

11 I have lived in Anchorage and I'm not a  
12 city person, so it was kind of hard for me. So moving  
13 down to Kenai was -- it was a blessing because it made  
14 me feel like I'm connected back to my people and living  
15 in the rural way. Since I have been working with the  
16 tribe, I have been working with the youth on the Kenai  
17 Peninsula, Native and non-Native. We run a summer camp,  
18 fish camp. And it fills me up with pride to see our  
19 youth go through the whole process of going from fishing  
the net, picking it, cutting it, brining it, and finally  
hanging it. I feel that our youth should not have to --  
we should not have to have a permit to do this, but it  
should be there for them, to be able to do something  
like that. I've always lived a subsistence life, and I  
feel like if we don't do it now, that some of it will be  
gone, so please consider our request. Thank you.

20 CHAIRMAN DEMIENTIEFF: Thank you. Any  
21 questions? Thank you very much. James Showalter.

22 JAMES SHOWALTER: Good morning. My name is  
23 James Showalter. I'm Kenaitze chairman and a tribal  
24 member. I've got a resolution from the Tribal Council.  
It's Resolution Number 98-38. It's a tribal resolution  
in strong support of the Kenai Peninsula Borough being  
designated as a rural area for purposes of subsistence.

Whereas, the Kenaitze Indian Tribe IRA is a  
federally recognized tribal government, reorganized  
under the statutes of the Indian Reorganization Act of

1 1934, as amended for Alaska in 1936, and in accordance  
2 with the (inaudible) and the tribal constitution. It is  
3 responsible for the social welfare of its 1,009 tribal  
members and 2,767 Alaska Native residents in upper  
central, southcentral Kenai Peninsula; and

4 Whereas, the Kenaitze Indian Tribe IRA has  
5 established a long-term goal which relates to the  
6 collective and individual social, economical and  
government concerns of its people; and

7 Whereas, the Kenaitze Indian Tribe IRA, the  
8 natural spirits of its land and its resources, since  
time immemorial, have respected and depended upon the  
9 natural resources along the Cook Inlet basin and its  
tributaries as our inherent and cultural way of life;  
and

10 Whereas, the Kenai Peninsula is a rural  
11 area by a reasonable definition of the term, which is  
demonstrated by the following factors, among others:

12 One. Seasonal employment, such as  
13 commercial and construction. And the lack of jobs and  
14 opportunity, thus creating a high degree of  
unemployment.

15 Two. Many sparsely settled communities on  
16 the Kenai Peninsula are isolated from each other and  
many people in these communities have no close  
neighbors.

17 Three. Many of the citizens living on the  
18 Kenai Peninsula have depended upon the subsistence way  
19 of life for generations, surviving on the abundant  
wildlife resources for food for their families.

20 Four. The communities in the Kenai  
21 Peninsula Borough, aside from the cities of Kenai and  
Soldotna, are not connected by sewer and water systems,  
and must rely on well and septic tanks.

22 Five. The citizens of the Kenai Peninsula  
23 must rely on the medical facilities located in Anchorage  
24 and the Lower 48 states for most specialized medical  
care.

25 Six. There is no public transportation  
system within the Kenai Peninsula Borough, thus making  
it difficult for the elderly and many of the low income

1 families to commute to shopping areas and medical  
2 facilities.

2

3 Six (sic). Many federal and State funding  
4 agencies, such as Alaska Village Initiative, the U.S.  
5 Department of Agriculture, consider the Kenai Peninsula  
6 a rural area, thus providing funds for projects such as  
7 agriculture, economic development, training assistance,  
8 and other projects to improve the well-being of the  
9 rural Alaskan communities.

6

7 Whereas, it is the conviction of the  
8 Executive Committee, Tribal Council of the Kenaitze  
9 Indian Tribe IRA, that the preservation of fostering the  
10 traditional subsistence lifestyle for its members and  
11 all Alaska Natives residing within the Kenai Peninsula  
12 Borough is a primary means of promoting, protecting its  
13 vital heritage of Dena'ina, Athabaskan, whose ancestors  
14 settled along the shores of the Cook Inlet basin and its  
15 tributaries.

11

12 Whereas, special circumstances which exist  
13 justify reconsideration of the Board's rural/nonrural  
14 determination as follows:

13

14 One. The Board's initial rural/nonrural  
15 determination with respect to the Kenai Peninsula was  
16 made without any input from the Regional Advisory  
17 Council, which had not yet been established.

16 The Board's initial determinations were  
17 based primarily on the State's nonrural determination of  
18 the Kenai Peninsula, which the Ninth Circuit Court of  
19 Appeals flatly rejected in the Kenaitze case vs. Alaska,  
20 on the grounds that it violated the definition of rural  
21 in ANILCA. The Board determination is in violation of  
22 the ethical mandatory law and it is a special  
23 circumstance justifying reconsideration at this time.

20

21 Two. During the 1995 public hearings on  
22 customary and traditional use determination on the Kenai  
23 Peninsula conducted by the Board as well as the Regional  
24 Advisory Council, a majority of local residents  
25 testified agreed that the Board's 1991 rural/nonrural  
26 determination was divisive, erroneous, and should be  
27 reconsidered. See script of the 1995 Kenai hearing.  
28 The testimonies taken during the public hearing, in  
29 addition to providing new and relevant information, also  
30 indicates that errors were made in the analysis and  
31 affecting the ways the communities were aggregated.

1

2 Three. The demographics of other  
3 information relating to the Kenai Peninsula contained in  
4 the report of the Institute of Social and Economic  
5 Research was not available at the time the Board made  
6 its 1991 rural/nonrural determination. The report  
7 provides compelling -- it is not consistent evidence,  
8 that the Board's 1991 nonrural determination with  
9 respect to the Kenai Peninsula violated the Board's own  
10 criteria for the rural/nonrural determination, as well  
11 as the Ninth Circuit Court of Appeals Kenaitze decision.

7

8 Four. The Council recommends  
9 recommendation to the Board in and of itself continues  
10 its special circumstances justifying reconsideration of  
11 the Board's nonrural determination. The Board is  
12 obligated to defend the Council's recommendation, except  
13 in the limited circumstances described in Subsection  
14 50 -- or, excuse me, 805-C. Here no justification  
15 exists in rejecting the Regional Advisory Council  
16 recommendation.

12

13 Now therefore be it resolved by the  
14 Executive Committee, Tribal Council of the Kenaitze  
15 Indian Tribe IRA, that the Kenaitze Indian Tribe IRA  
16 fully supports and endorses Title VIII of ANILCA, which  
17 grants rural preference to the citizens of the Kenai  
18 Peninsula, therefore making them eligible to practice  
19 their indigenous, customary and traditional subsistence  
20 way of life.

16

21 And I've got one written up here for  
22 myself. On rural. We, the Kenaitze, have been to court  
23 on rural meanings. In 1989, we, the Kenaitze, have won  
24 the issue on rural in the Ninth Circuit court, which is  
25 an order from the high court, and yet the State is still  
26 saying no to rural. And now, and since then, the  
27 Federal Subsistence Board is ruling by the State's word.  
28 This action is in violation of ANILCA, Title VIII. And  
29 of the federal court's decision, which the Kenaitze has  
30 won, and you're still making a ruling by the State's  
31 thinking. Don't you think it's about time that you  
32 looked at what the Ninth Circuit court said back in 1989  
33 and say that the area is rural? Now you want to put  
34 this off until after the year 2000 census, which in turn  
35 would have information that remains on the 2000 census  
36 until years later. So why don't you just go by what the  
37 high court said and just do it? That's the word of the  
38 Ninth Circuit court. They said it way back in 1989.

1 Special circumstances. The Regional  
2 Advisory Council has twice recommended the Kenai  
3 Peninsula to be rural. In 1995 and 1998. After the  
4 hearings on customary and traditional use by Kenaitze  
5 Tribe members, and by report from the Institute of  
6 Social and Economic Research. So since the Regional  
7 Council has recommended twice in the past that the  
8 peninsula be rural, so the Council should stand by their  
9 word and support, which they did, the meaning of rural  
10 on the peninsula. To get the numbers the State would  
11 like by aggregating communities on the Kenai is unreal  
12 and it's not right. On the Kenai is a vast area. Just  
13 the city limits of Kenai. It's large, scattered, and  
14 not like other large cities. So the research that was  
15 done aggregated all the rural cities together to get a  
16 large number for a nonrural determination, but look at  
17 the vast areas of wilderness and wilderness wildlife  
18 areas on the peninsula.

19  
20 And for being classified rural, it's also a  
21 big plus for the Kenai. The rural cities of Kenai do  
22 receive large amounts of federal dollars because they  
23 are classified as rural. To name a few, the Rural Fire  
24 Protection Area; Rural Development Program; Economic  
25 Development Recovery Program; Resources, Conservation  
26 and Development Program; Rural Department Loans Program;  
27 Rural Utilities, and there's much more that rural  
28 dollars go to the Kenai.

29  
30 And in closing, the Federal Subsistence  
31 Board must look at what the Ninth Circuit court has  
32 said, and that the Kenai is rural because of Title VIII  
33 of ANILCA. So you must do what the law is and just do  
34 it. Make the Kenai rural. Thank you.

35  
36 CHAIRMAN DEMIENTIEFF: Thank you. Any  
37 questions? Thank you very much.

38  
39 UNIDENTIFIED SPEAKER: I've got one here,  
40 written one. Do you want it to be submitted?

41  
42 CHAIRMAN DEMIENTIEFF: Helga or Rachel can  
43 get that. That's written testimony from --

44  
45 UNIDENTIFIED SPEAKER: Yes, from an  
46 individual.

47  
48 CHAIRMAN DEMIENTIEFF: Could we get that  
49 copied and distributed. We need to do that probably  
50 during the lunch hour, I would imagine, so we can have

1 it available to us at 1:00. Thank you. Liz Dalton.

2 LIZ DALTON: My name is Liz Dalton. I'm  
here to support the Kenaitze Indian Tribe and would like  
3 to ask the Board to consider classifying the entire  
Kenai Peninsula as rural before the year 2000. I do  
4 believe that there are special circumstances that are  
here to back up the special circumstances. A lot of  
5 them are already listed. The programs that claim rural  
and the agencies that get grants and services.

6  
I've lived in Alaska all my life and grew  
7 up in a subsistence lifestyle, and that's the way I  
would like to teach my children. And as it is right  
8 now, I have -- I can take them to one fish camp a year,  
through the Kenaitze Indian Tribe, where they can learn  
9 to process, and they have one moose subsistence hunt,  
and that's the extent of what my kids know of  
10 subsistence. I really want to support the tribe on  
their -- I want to support them in being here on  
11 classifying the Kenai Peninsula as rural. Thank you.

12 CHAIRMAN DEMIENTIEFF: Thank you very much.  
Any questions? Thank you. Archie Minkler.

13  
ARCHIE MINKLER: Hello, I'm Archie Minkler.  
14 I grew up in Kenai with my grandparents. My grandfather  
was always hunting and fishing or gathering some sort of  
15 plants and berries. Basically, my whole childhood and  
development has been nothing but harvesting of the land.  
16 The last couple of years it's been harder and harder to  
harvest anything. The reason being all the rules and  
17 regulations that the State has put on the different  
animals and locations where we used to go gather our  
18 food. I hunt and fish not just for myself but my whole  
family and friends. I also give some of my catch to the  
19 not so fortunate people that I do know. We share  
everything in my family, as does the tribe.

20  
Here on the peninsula there are many  
21 families and elders that have nobody to provide for  
them. I hear people say, well, just go buy some food.  
22 Well, if you're not working, how are you going to pay  
for it? Especially on the peninsula, now with all the  
23 different things being cut, there's a lot of people  
losing their jobs from the oil field, and also all the  
24 canneries being shut down.

25 If you look at some of our elders, they  
love the traditional foods because it tastes good, and

1 somebody cared enough to go and harvest it for them.  
Each year gets rougher and rougher with the new laws  
2 that are passed. For example, the moose hunt, they have  
to be a certain size or over a certain size in order to  
3 bag them, and you're only restricted to certain  
locations where you can go get them at. With hundreds  
4 of other people also in that same area. It's almost  
like we have to tranquilize those moose and go out there  
5 with our tape measure to make sure that they're the  
right size. I hunt every year, and I'm lucky if I can  
6 get one out of every six to seven years.

7       You know, it's a lot different if you live  
on the peninsula. It's like the State don't want to  
8 acknowledge the people that do live there year-round and  
provide the community with their hard-earned money. It  
9 seems the State is more interested in the out-of-state  
people. Even with the subsistence now, you're only  
10 allowed so much each year. These families are not rich.  
They depend on the subsistence harvest. There are  
11 families on the peninsula that I do know that don't have  
electricity or running water. If they cannot afford  
12 these basic essentials, how can they afford food? I  
guess what I'm trying to say is that we really need  
13 subsistence for the people that do live here year-round.  
And if you don't believe me, just come on down and look  
14 at some of the families and tell me how they're supposed  
to support their families and supply them with enough  
15 nutritional food if you cut off their supply.

16       I do have my own well and my own leach  
field, and I'm about six and a half miles from downtown  
17 Kenai. And I did at one point in time catch a live  
trap, with Ted Spraker from the Department of Fish &  
18 Game down there in Kenai at the tribal headquarters, a  
good-sized brown bear sow and three cubs. You know, I  
19 guess my biggest fear is knowing that our kids aren't  
going to be able to do a lot of the different things  
20 that I was able to do with my grandparents. I used to  
go hunting and fishing with them all the time. And I do  
21 work with some of the kids down there, doing educational  
fisheries and educational moose hunts, and a lot of  
22 these kids have never even seen it or done it. What I'm  
afraid of, if a natural disaster ever does happen, how  
23 are they going to know to take care of themselves and to  
harvest the land. Thank you.

24

CHAIRMAN DEMIENTIEFF: Thank you very much.  
25 Any questions? Thank you. Arthur Moonin.



1           ARTHUR MOONIN: Hello, my name is Arthur  
Moonin. I'm 21 years old. I lived in Port Graham up  
2 until I was 12. I moved up to Kenai and I've lived on  
the Kenai Peninsula my whole life. To tell you the  
3 truth, Palmer is as far north as I've gone. Never went  
down south past Nanwalek. I've done commercial fishing.  
4 I have not yet hunted. Hopefully, if things go through  
here, I'll be looking forward to going with Archie to go  
5 get me a moose.

6           I've also seen what taking away some things  
from people can do to tribes, or whatever you want to  
7 call it. And sometimes it's good, it's for a good  
cause, but then it turns out to be something that leads  
8 to misfortune. And people get upset, yeah, but -- the  
people I've been with have been raised on Native foods.  
9 And the game that's around here, or on the peninsula, is  
what they're raised on. I really don't care for Native  
10 foods, it kind of tastes funny to me. But I'd love to  
give my mom, my grandparents, family, any kind of food  
11 they want. They all like moose, porcupine, fish, seal,  
sea lion. But from what I understand, it would be very,  
12 very difficult to do it. It would almost be like owning  
a black market -- or going to a black market, just to  
13 get the stuff. I know that you think that you're trying  
to help out, but have you thought about the consequences  
14 of people losing their traditions and lifestyles that  
they've kept with their families for hundreds and  
15 hundreds of years? That's about all I have to say, and  
thank you for giving me your time and listening to me.  
16 Thank you.

17           CHAIRMAN DEMIENTIEFF: Thank you, any  
questions? Thank you very much. Geneva Marinkovski.  
18

          GENEVA MARINKOVSKI: My name is Geneva  
19 Marinkovski, employed by Kenaitze Indian Tribe IRA,  
Kenai, Alaska. On behalf of my family and the Kenaitze  
20 Indian Tribe, I urge you to reconsider nonrural  
determination and make clear that the entire Kenai  
21 Peninsula be rural.

22           I was born and raised in the village of  
Selawik, where I was taught to live subsistence  
23 lifestyle. My folks, Andrew and Vera Skin, taught me  
traditional values of Inupiaq subsistence lifestyle. In  
24 1982, I moved to the Kenai Peninsula to raise my own  
family, where I continue my subsistence lifestyle with  
25 the help from my sister and brother-in-law.

1 Up to this day I live on a rural setting,  
2 where the moose roam around my backyard, and eagle nest  
3 within 100 feet of our home. And also, to this day, I  
4 live on a gravel road and rely on well and septic for  
5 water and sewer. If Kenai Peninsula is considered  
6 nonrural, then we would not be able to get funds to  
7 provide socioeconomic work for our tribe or local  
8 entities. On behalf of my family, respectfully, the  
9 Kenaitze Indian Tribe IRA, and as resident of Kenai  
10 Peninsula, I urge you to reconsider the Kenai Peninsula  
11 be rural. In addition, I'm also supporting the "We The  
12 People" by marching this afternoon in support of the  
13 subsistence rights. Thank you.

14 CHAIRMAN DEMIENTIEFF: Thank you. Any  
15 questions? Thank you very much. Mary Ann Mills.

16 MARY ANN MILLS: My name is Mary Ann Mills.  
17 I am Dena'ina Aleut from the Kenai Peninsula and I am a  
18 tribal member of the Kenaitze Indian Tribe, and among  
19 one of many indigenous peoples whose homeland is Alaska.  
20 The subsistence issue is of great concern to the people  
21 of the Kenai Peninsula, in part because of a sneaky  
22 maneuver called "rural preference." This concerns all  
23 Alaska Natives because if subsistence can be taken from  
24 our people, it can be taken from the rest of the  
25 indigenous peoples of Alaska.

26 The Kenai Peninsula is referred to as the  
27 testing ground for subsistence for the state of Alaska.  
28 The subsistence issue can and should be remedied by  
29 basing our resolve in honesty and in truth, and in  
30 accordance with inherent rights, laws, constitutions,  
31 conventions, tribunals, and sacred trusts assumed by the  
32 State, federal and universal entities, and anyone else  
33 who chooses to speak on our behalf.

34 I would like to request this of the  
35 following concerns be included on special circumstances  
36 for consideration. The indigenous peoples of Alaska  
37 have been very good hosts and hostesses of most guests  
38 who have come into our land. It is our culture to care  
39 and share with others, and it is our culture to respect  
40 everyone and everything in our existence. Before the  
41 United States and before the state of Alaska, our land  
42 was pristine, our waters were clean, and our fish and  
43 wildlife was plentiful.

44 The biggest deception of the U.S.  
45 Government was when they announced to the American

1 people and the world they purchased Alaska from Russia.  
It is a well documented fact, Russia never claimed  
2 ownership of Alaska. Verification of this is found in  
the Kozlizof (ph) memorandum and further documented in  
3 the 58th Congress, Second Session, Document 162, Alaska  
Boundaries Tribunal Proceedings of Alaska Boundaries  
4 Tribunal Convened at London.

5 What the U.S. purchased from Russia was the  
right to trade with the Indian, Eskimo and Aleut  
6 peoples. After the Jewish Holocaust of World War II,  
the United States and other countries formed the United  
7 Nations in an effort to provide world peace and to  
prevent other Holocausts or genocide from occurring.  
8 Their guidelines are found in the U.N. Charter, which  
includes the convention of the prevention and the  
9 punishment of the crime of genocide. The United States  
took upon themselves the sacred trust over Alaska and  
10 its peoples, as defined in the U.N. Charter, Chapter 73,  
which states that our peoples were to be brought to the  
11 full measure of our own self-governance. In an  
unprecedented move, the U.S. not only allowed military  
12 servicemen to vote for statehood, but paid them money as  
well. Those who were not allowed to vote were those who  
13 could not speak English, most of whom were Alaska  
Natives.

14  
As a preexisting condition for statehood,  
15 Alaska had to accept into its constitution a disclaimer  
clause, Article 12, Section 12, of the State  
16 Constitution, which states, the state of Alaska and its  
people forever disclaim all rights and titles to  
17 property, which includes hunting and fishing rights of  
Indian, Aleut and Eskimo peoples. Forever is infinite,  
18 boundless, limitless.

19 Other special circumstances is the fact  
that the indigenous peoples of Alaska has never  
20 relinquished, or have any treaties or any other  
arrangements, formal or otherwise, with Imperial Russia,  
21 the Russian-American country, or the United States, in  
which our people conveyed, ceded, impaired, or otherwise  
22 relinquished or encumbered or restricted our freedom,  
our liberty, or our inherent rights to our homeland.

23  
In 1971, the U.S. signed into law the  
24 Alaska Native Claims Settlement Act. This was  
accomplished without the consent or ratification of our  
25 peoples. ANCSA is a product of greed that has created  
dire -- crisis of dire proportion. When Congress passed

1 the Alaska Native Claims Settlement Act, it committed to  
keep subsistence options open to future generations of  
2 Alaska Natives. The Conference Committee report for the  
act states that, quote, all Native interests in  
3 subsistence can and will be protected by the Secretary  
of Interior through exercise of his existing withdrawal  
4 authority. The Conference Committee expects both the  
Secretary and the State to take action necessary to  
5 protect the subsistence needs of the Natives. End of  
quote.

6  
ANILCA was accomplished by the United  
7 States with input from our corporate leaders, without  
the consent of our peoples. In testimony on H.R. 39,  
8 Byron Mallott, representing AFN, stated, quote, frankly,  
the major reason we have researched the Native-only  
9 subsistence system is that while our lawyers feel  
certain that Congress has the power to create a Native  
10 subsistence system which will withstand all attacks on  
constitutional grounds, they are concerned that if a  
11 broader subsistence system which includes non-Native is  
established, it may be struck down as an  
12 unconstitutional exercise of power. End of quote.

13 The advice given to AFN by their lawyers  
went unheeded, and 50,000 Alaska Natives AFN claimed to  
14 represent was given no voice in their affairs. In the  
congressional record of November 12th, 1980, H-10545,  
15 the manager of the House of Representatives on the  
matter of ANILCA, Mr. Udall, stated, quote, I am  
16 particularly proud of the subsistence language in the  
bill because it fully reflects the commitment that was  
17 made to the Alaska Native people at the beginning of the  
95th Congress. At that time we promised that any law  
18 would recognize the importance of subsistence and would  
contain management provisions which recognize the  
19 responsibility of the federal government to protect the  
opportunity from generations to generations, so that the  
20 Alaska Natives now engaged in subsistence uses, their  
descendants and their descendants' descendants, will  
21 determine for their own cultural orientation and at a  
rate and degree of evolution, if any, of their Alaska  
22 Native culture.

23 Mr. Udall also pointed out, although there  
are many non-Natives living a subsistence way of life in  
24 rural Alaska, which may be an important national value,  
the subsistence title would not be included in the bill  
25 if non-Native subsistence provisions are included, in  
recognition of ongoing responsibility of Congress to

1 protect the opportunity for continued subsistence uses  
in Alaska by the Alaska Native people, and  
2 responsibility consistent with our well-recognized  
constitutional authority to manage Indian affairs. End  
3 of quote. And the State did agree on that.

4 This special circumstance portrays the  
fiduciary responsibility of the United States with  
5 regards to the indigenous peoples of Alaska. For  
thousands of years our people have lived in balance with  
6 our environment, understanding Creator has put his  
spirit into all life. Subsistence to the Dena'ina is  
7 very sacred. It isn't about money, control, greed, or  
rural preference. We believe our earth mother is a  
8 living being and we are here to respect her by  
establishing a management plan that includes seven  
9 generations into our future. To the Dena'ina, the  
plants, animals, fish, water and earth are our relations  
10 and are literally who we are. They have been a part of  
our genetics since before memory.

11  
It is a proven medical fact that when we  
12 are deprived of our traditional food, we become sick.  
Today our ethnic group has among one of the highest  
13 disease rates in the nation, and is comparable to that  
of Third World countries. It is important to point out  
14 that all indigenous peoples of Alaska inherited  
subsistence from their Creator who placed us here, and  
15 from our ancestors who reserve these sacred rights for  
their future generations. The Dena'ina intend to pass  
16 these sacred rights on to our future generations.

17 I would like to go on record stating that,  
as one of Alaska's indigenous peoples, I have never  
18 relinquished any of my inherent rights, nor do I give  
anyone permission to give or compromise away any of my  
19 rights. I stand firm and would like to go on record  
that basic sacred, fundamental human rights are not  
20 negotiable. Thank you.

21 CHAIRMAN DEMIENTIEFF: Thank you. Are  
there any questions? Thank you very much. I'd like to  
22 ask --

23 MARY ANN MILLS: I have a copy for you.

24 CHAIRMAN DEMIENTIEFF: That's fine. Allan  
Balkwin. I'm not sure -- is that right? I'm not  
25 calling him up at this time. Nina Demidoff, Eva  
Lorenzo. Are there any of you that can't come back this

1 afternoon? It's lunchtime now and I'm wanting to break.  
Is there anybody that can't come back, of those three?

2

Let me just tell you what we're going to do  
3 this afternoon. We have a certain process that we go  
through, and what I did is kind of, I just jumped ahead  
4 to get in additional public testimony time because we  
had the time. This afternoon we will summarize written  
5 comments. The letter that was passed out by  
Mr. Showalter will be read into the record. Then we'll  
6 have the Staff Committee recommendation, Department of  
Fish & Game comments, and then we will resume public  
7 testimony after that process. So at this time we will  
go ahead and break for lunch until 1:00.

8

(Lunch recess from 12:00 to 1:00 p.m.)

9

CHAIRMAN DEMIENTIEFF: We'll reconvene the  
10 meeting of the Federal Subsistence Board. At this time  
we are going to go into our -- continue on with our  
11 procedure for addressing proposals. And with that,  
we've already had the staff report. It looks like most  
12 everybody was here that heard that report, so we're not  
going to go into that again. It is on the record. At  
13 this time we will move on with written public comments.

14 HELGA EAKON: Mr. Chairman, members of the  
Board. For the record, my name is Helga Eakon, and I am  
15 the Regional Council Coordinator for Southcentral.  
Regarding the public hearings that were held in November  
16 of 1998, they were chaired by the vice-chair of the  
Council, Fred John, Jr., and our hearing officer was  
17 Bill Knauer. And they both asked the members of the  
public to focus on are there special circumstances.  
18 With that in mind, I shant belabor the testimony on the  
larger issue of rural and nonrural. I'm going to focus  
19 on the special circumstances testimony.

20 At the November 9, 1998 public hearing at  
Seward, there were 15 people in attendance, with four  
21 testifying, and none of the four spoke to special  
circumstances. They just opposed the Kenaitze request.  
22 At the November 11 hearing in Homer, at which 25 people  
signed in, of whom 13 testified, six of the 13 opposed  
23 the request, and the only one who spoke to special  
circumstances was deputy commissioner of the Alaska  
24 Department of Fish & Game, who said that the Department  
does not see any special circumstances for the Board to  
25 reconsider its determinations out of cycle. And he  
urged the Board to wait until the 2000 census

1 information was available. Of the seven testifiers who  
2 supported the Kenaitze request, none spoke directly to  
3 the issue of special circumstances.

4 At the Kenai public hearing, at which a  
5 total of 81 people signed in, with 27 testifying, the 17  
6 testifiers who opposed the request did not mention  
7 special circumstances. Of the eight who supported the  
8 Kenaitze request, only one spoke to special  
9 circumstances, and that was the Kenaitze Indian Tribe,  
10 who submitted a resolution outlining the special  
11 circumstances. And those were already read into the  
12 record by Mr. Showalter when he testified before  
13 noontime, so I shant go into that.

14 Regarding written public comments during  
15 the period of October 9 through December 10, 1998, the  
16 Southcentral Regional Council received 57 written  
17 comments. Of these, 38 were in opposition to the  
18 Kenaitze Indian request, and 17 were supportive. Of  
19 those who opposed the request, the Alaska Department of  
20 Fish & Game wrote and said -- they put down in writing  
that they did not see any special circumstances, and it  
was again said the Board should wait for the 2000 census  
data. And the Cooper Landing Fish & Game Advisory  
Committee expressed the same concern. Those who wrote in  
support of the request, the Copper River Native  
Association supported the request, citing the Ninth  
Circuit Court of Appeals Kenaitze case, that the Kenai  
areas is a rural place and the decision should be  
considered a special circumstance.

17 The Kenaitze Indian Tribe once again read  
18 their Resolution 98-38 into the record, and as did the  
19 Native American Rights Fund. And they added a fifth  
20 special circumstance; namely, that Title VIII is Indian  
legislation and, as such, must be interpreted broadly in  
favor of protecting the subsistence rights of Alaska  
natives.

21 The Southcentral Regional Council held a  
22 public meeting in March 1998, and of the people who  
23 testified, there were 18, and they were all in favor of  
24 the Kenaitze request. One in particular was Mr. Emil  
25 Dolchok, and you did receive his letter which I will  
read into the record as your chair asked me to do after  
I do the summary. And his concern was that local  
Natives who have lived here all their lives have every  
right to harvest early run king salmon. In fact, they  
should have a prior right to the taking of these king

1 salmon at any time during the summer months when they  
are running. Recognize the year-round residents as a  
2 priority in harvesting these king salmon when they first  
enter the Cook Inlet. And he said that right now the  
3 local residents do not have access to the king salmon,  
and this lack of access is a special circumstance.

4

The Kenaitze Tribe reread their Resolution  
5 98-38 into the record, and someone testified that the  
Kenaitze case is a special circumstance. And there were  
6 several residents who had lived in rural areas and  
testified that they lost their subsistence rights when  
7 they moved to the Kenai Peninsula. And someone else --  
and that was the attorney for the tribe, said these in  
8 the 1995 customary and traditional use public hearings  
provided more information than the Board had when it  
9 made its initial determinations. Special circumstances  
are more than just a sudden population change.

10

And for the members of the public that are  
11 here, there are booklets containing the letters of  
public comment on the table over there, as well as a  
12 table that summarizes those public comments. And that  
concludes -- oh. After the Regional Council meeting,  
13 our Office of Subsistence Management did receive three  
letters in support of the Kenaitze Indian Tribe request.  
14 The first came from the Alaska Inter-tribal Council,  
signed by Mike Williams, chair. And he wrote to support  
15 the tribe's request that the Board revisit its earlier  
determination that the Kenai Peninsula is not rural.

16

The second letter is dated March 31, 1991,  
17 and it came from the Native American Rights Fund, signed  
by Heather Kendall-Miller, and she again listed five  
18 special circumstances. And I believe that previous  
testimony today did capture all of her fine points, so I  
19 shant reread those.

20 And finally there was a letter from the  
Rural Alaska Community Action Program, signed by Jeanine  
21 Kennedy, executive director, addressed to  
Mr. Demientieff. And she said that she thought it was  
22 very important for the Board to reconsider the 1991  
rural determinations for the Kenai Peninsula. And you  
23 have the letter there in your packet, so I shant go into  
detail on that. And that summarizes public comment to  
24 date, Mr. Chair.

25 Did you want me to read this? Okay. This  
is a letter from an elder of the Kenaitze Indian Tribe,



1 Emil Dolchok. This is dated May 1, 1999. My name is  
2 Emil Dolchok. I was born and raised in Kenai, and I  
3 would like to remind this Board that our subsistence  
4 lifestyle up until the sport fishermen arrived and took  
5 over the Kenai River was very, very real. We would set  
6 our family net out at the mouth of the Kenai River  
7 around the middle of April and catch a few king salmon  
8 for the smokehouse. We would salt the heads, sun-dry  
9 the backbone, and smoke the rest. And believe me, I  
10 still do live a subsistence lifestyle. Just because  
11 there is a paved highway connecting us to the rest of  
12 the outlying communities should not and will not stop me  
13 from living the subsistence lifestyle I have been raised  
14 in. This very lifestyle that had been handed down to me  
15 and firmly sealed within my mind and body by my loving  
16 and caring parents.

17  
18 I have witnessed since the sport fishermen  
19 moved into the Kenai area their greedy, heartless  
20 methods in lobbying the Board of Fisheries and the  
21 Department of Fish & Game, in eventually cutting us off  
22 completely from harvesting the early run king salmon,  
23 which was our main food supply that we smoked, salted  
24 and dried for winter. Sure, they do let us fish for  
25 personal use, but not until half the summer is over,  
around the end of June month, when the early run king  
salmon have gone by and the late run king salmon have  
not started to show up yet. These very early run king  
salmon that we Natives prized and cherished for our  
subsistence through the winter is being completely  
monopolized by the greedy sport fishing guides for the  
mostly nonresident sport fishermen.

17  
18 I have written letters to the governor, the  
19 Legislature, the Board of Fisheries, and the Department  
20 of Fish & Game. I guess a person has to be wealthy to  
21 be wine and dine the personnel of the Board of Fisheries  
22 to turn their heads towards the needs of the lifelong  
23 year-round Native residents who want and need these  
24 early run king salmon for our subsistence lifestyle.  
25 That is why I urge this Board to reconsider the Kenai  
Peninsula rural area. We are not living among  
skyscrapers or underground commuters or in the hustle  
and bustle which goes on in urban areas. We are in a  
rural area, and there is no way anyone can dispute that.  
This Kenai Peninsula area is rural, rural, rural. I can  
go to bed at night and not be bothered by never-ending  
noisy traffic or the hustle and bustle of the  
never-ending commuter traffic.

1 I live about four miles from the village of  
2 Kenai, the very little village I've loved and cherished  
3 all my life. My old house still stands near the banks  
4 at the mouth of the Kenai River, next to the Old Russian  
5 Orthodox Church and the St. Nicholas Chapel where my  
6 great-grandfather is buried beneath. My old home is now  
7 a coffee shop, but still setting around its rural  
8 surroundings. Sure, I live in a modern dwelling, two  
9 bedrooms, with electricity, running water and indoor  
10 plumbing, and I am not on city water and sewer. I have  
11 my own deep well and septic system. My home is located  
12 on the banks of Beaver Creek, upstream one mile from the  
13 Kenai River. The ice has gone out and the ducks have  
14 arrived. A pair of mallard ducks and a pair of cranes  
15 nest across the creek from our house every year. Kings,  
16 reds, silvers and pink salmon all are in this creek  
17 throughout the summer months. Beaver, otter, muskrat,  
18 mink all use this waterway in the summer. Coyote,  
19 weasel, black and brown bear have all wandered by our  
20 house since we moved here in 1979. This wildlife is  
21 only visible in the rural areas. Proof positive that  
22 the Kenai Peninsula has always been rural.

23 Now I urge this Board to please reconsider  
24 this Kenai Peninsula area as rural. Please give us  
25 lifelong Kenai Natives our subsistence lifestyle back.  
26 Constitutionally, we have every right to harvest these  
27 king salmon that our Creator placed on this earth for  
28 the residents of this area for our family to survive on.  
29 Thank you. You know, by using good judgment you will in  
30 some strange way be very gratefully rewarded.  
31 Respectfully, Emil Dolchok, lifelong Kenai resident.

32  
33 CHAIRMAN DEMIENTIEFF: Thank you, Helga.  
34 Staff Committee recommendation?

35 TOM BOYD: Mr. Chair. The Staff Committee  
36 finds that sufficient information has been provided by  
37 the petitioners and the Regional Advisory Council to  
38 suggest that there were inconsistencies in the methods  
39 used to aggregate communities and the application of  
40 socioeconomic characteristics in making the 1990  
41 rural/nonrural determinations for the communities on the  
42 Kenai Peninsula, and the communities of Saxman, Kodiak  
43 and Sitka.

44 Given the serious questions posed by the  
45 petitioners and the Council, the Staff Committee  
46 recommends a review be conducted of the methodology used  
47 in these earlier rural determinations, that revisions to

1 this methodology be made where appropriate in view of  
2 the questions raised by this petition, and that the  
3 methodology be clearly documented prior to the next  
4 round of rural determinations following receipt of the  
5 year 2000 census data.

6 The Staff Committee also finds that a  
7 revised methodology for rural determination should be  
8 applied for all communities statewide, and that this new  
9 assessment be done following receipt of, again, the 2000  
10 census data.

11 The focus of the Committee's finding on the  
12 assertions pointing to the inconsistencies in  
13 aggregation and the application of the socioeconomic  
14 characteristics for these communities. Although the  
15 testimony and information provided to the Board during  
16 its 1990 deliberation provided a basis for the Board  
17 determinations, the comparative analysis between the  
18 Kenai communities and Kodiak, Sitka and Saxman provided  
19 by the ISER report suggested that earlier analysis  
20 provided to the Board in support of their determinations  
21 was problematic. The other assertions listed by the  
22 Council and the petitioner were not found persuasive by  
23 the Staff Committee for the reasons presented in the  
24 staff analysis.

25 Let me just recap there for a second. I  
26 think where the Staff Committee is focusing is on the  
27 assertions of inconsistencies in the treatment of the  
28 Kenai nonrural communities with the communities of  
29 Sitka, Saxman and Kodiak in the 1990 determinations.

30 Another concern discussed by the Staff  
31 Committee was that the administrative record and  
32 supporting documentation on these initial Board  
33 decisions is sketchy and difficult to follow, and not up  
34 to the standards of thoroughness that would be applied  
35 if these decisions were made today. I think during our  
36 review, we were reminded that many of the earlier  
37 decisions of the Board in establishing the Federal  
38 Subsistence Program were expedited in order to make this  
39 program functional in a hurry. And while we could not  
40 conclude that wrong decisions were made, the  
41 incompleteness of our analytical record, taken together  
42 with the more rigorous ISER analysis provided by the  
43 Kenaitze petition, caused concern.

44 Another difficulty faced by the Staff  
45 Committee in reviewing this petition is the lack of

1 guidance in the regulations regarding special  
2 circumstances. One could logically conclude that this  
3 provision was inserted into the regulations to cover  
significant shifts in demographics of a community that  
lead to a change in its rural or nonrural status.

4 I think the example that's been articulated  
is Adak, which resulted in a significant shift in  
5 demographics when the military base was closed and the  
people, many of the people left that area. Currently,  
6 that area is determined to be nonrural, or urban, if you  
will, under the current Board determinations. However,  
7 if you looked at it today, one may argue otherwise.

8 Lacking such guidance, it seems also  
appropriate that we also be guided by the criteria  
9 applied in reconsidering other Board determinations.  
These criteria include whether new information has been  
10 provided that might lead to a change in a previous Board  
decision, or whether it was demonstrated that the Board  
11 erred in its original decision as a result of the  
information provided or the procedures used. In  
12 applying these guidelines to the Kenaitze Tribe's  
request, we have concluded that new information does  
13 exist and, if reevaluated, could lead to changes in the  
determinations.  
14

In summary, the Staff Committee finds that  
15 both the Kenaitze Tribe and the Regional Advisory  
Council requests raise serious questions regarding the  
16 Board's original rural determinations. These questions  
revolve around the application of factors used in the  
17 aggregation of the communities on the Kenai Peninsula,  
as well as the consistency of application factors  
18 between the Kenai communities and other communities  
outside the Kenai Peninsula; namely, Kodiak, Saxman and  
19 Sitka. The appearance of inconsistent treatment between  
communities gave us cause for this concern. That left us  
20 wondering the best way to proceed.

21 And in short, we felt, first of all, that a  
review of the methodology was warranted. And given the  
22 short time remaining until the decennial census and the  
time it would take to develop and gain consensus on a  
23 new rural process and then conduct a new analysis, and,  
moreover, to go through the rule making process, it  
24 seems more prudent to us that we would use this  
intervening time to review and revise the process, and  
25 that a new process could then apply to the 2000 census  
data in the normal cycle of reviewing rural

1 determination. For consistency in determinations, we  
2 felt that it was important that the same types of census  
3 data are used for all communities or areas.

4 I think our main concern in this was that  
5 we provide the Board a credible effort. And given the  
6 timing of where we're at, just prior to the year 2000,  
7 we felt that we needed the time to develop the  
8 methodology first and then apply it, and it just seemed  
9 to make more sense not to go backwards with the '90  
10 effort, but to go forward with the 2000 data.

11 I'll just conclude by saying that we  
12 struggled with this, as a staff and an interagency  
13 committee. Obviously, we weren't all in agreement. And  
14 while the majority of the committee favored the view  
15 I've just explained, there was a dissenting view as  
16 well. And I'll just read that to you.

17 To deny review of the Federal Board's  
18 rural/nonrural determinations for the Kenai Peninsula  
19 before the 2000 census is furthering the violation of  
20 the Equal Protection rights of the Kenaitze Tribe. The  
21 questions raised by the Tribe and the Southcentral  
22 Regional Advisory Council regarding the aggregation and  
23 the methods used by the Federal Board clearly show that  
24 they have been treated differently than other  
25 communities in Alaska. To further deny that review  
26 until after the year 2000 census is also to deny their  
27 due process. In addition, the Board is failing to  
28 provide the subsistence opportunity that the Board is  
29 mandated by ANILCA to provide. The Board has denied  
30 this priority to them for nine years and, if the  
31 decision is left in abeyance until after the 2000  
32 census, for 13 or more years, merely for bureaucratic  
33 convenience. Finally, the Regional Advisory Council has  
34 recommended that the Board make this review and find the  
35 Kenai Peninsula rural.

36 A new methodology does not have to be made  
37 for the Kenai analysis or review. The Board merely has  
38 to review using the criteria or standard used in 1991  
39 for all communities. Then apply the 1991 standard to  
40 the Kenai Peninsula.

41 The concern regarding the creating of a  
42 clear methodology for the year 2000 review of all  
43 communities in Alaska is a separate and different issue.  
44 The Kenai question and their treatment is based on a  
45 standard used in 1991, not the standard that will be

1 applied after the 2000 census. That concludes our  
2 recommendation, Mr. Chair.

2

CHAIRMAN DEMIENTIEFF: Thank you.

3 Department comments?

4 ELIZABETH ANDREWS: Thank you,  
5 Mr. Chairman. Appreciate the opportunity to comment on  
6 this again.

6 Previously, the State of Alaska has  
7 commented on this request, both in oral testimony by the  
8 Deputy Commissioner of Fish & Game, Rob Bosworth, on  
9 November 11th, 1999 -- I mean 1998, at the Southcentral  
10 Council hearings in Homer, and in a letter from  
11 Commissioner Frank Rue to the Southcentral Council,  
12 dated December 9th, 1998. And I'd like to incorporate  
13 those comments just by reference to them. They're  
14 included in your packet that has been handed out to the  
15 public, as well as yourself, that's titled Kenai  
16 Peninsula Rural Determinations: Review of Special  
17 Circumstances, May 5-6, 1999.

12

13 I'll just, in our testimony today, just  
14 summarize what our comments are. First, at this time we  
15 do not see that there are any special circumstances  
16 justifying review of the current rural and nonrural  
17 designations on the Kenai. We're not aware of any new  
18 information creating special circumstances or of  
19 information not available to the federal program when it  
20 made its 1991 designations. We do not consider the fact  
21 that the initial Federal Board determination was made  
22 without input from the Regional Advisory Council to be a  
23 special circumstance, since all of the Board's initial  
24 determinations were made without Advisory Council input.  
25 And that point was brought out in your staff analysis.

19

20 With regard to population information, the  
21 State believes that any reassessment of the rural or  
22 nonrural status of the Kenai Peninsula should occur only  
23 with updated information from the 2000 U.S. census,  
24 rather than information from the 1990 census or other  
25 State or federal sources that provide only population  
26 estimates and not censuses. This review should also use  
27 information from a 1999 study of resource harvest and  
28 socioeconomic factors on the Kenai Peninsula that's  
29 being funded by one of your own agencies, the Fish and  
30 Wildlife Service, to update information on the Kenai  
31 Peninsula.

1 With regard to aggregation of communities,  
the Federal Subsistence Board, in our view, should  
2 continue to follow federal regulations regarding when to  
aggregate populations for rural or nonrural  
3 determinations. That is, and I quote, communities or  
areas which are economically, socially or communally  
4 integrated shall be considered in the aggregate. End of  
quote. There's a solid information basis for  
5 aggregating Kenai Peninsula road-connected populations.  
The Federal Board findings, as well as the State Board  
6 findings, are in agreement that the majority of the  
Kenai Peninsula population, that is about 46,000 persons  
7 in 1997, based on the estimates, lived in nonrural  
areas.

8

As I mentioned earlier, there is additional  
9 information and details regarding these comments in our  
December 9th, 1998 letter, as well as in November 11th,  
10 1998 testimony. That concludes the State's comments,  
Mr. Chair.

11

CHAIRMAN DEMIENTIEFF: Thank you. We at  
12 this time have three people who are signed up. If  
there's anybody else who is willing to testify, please  
13 get the blue cards from the back table and they'll get  
them to us.

14

Allan Balkwin. Is that the correct  
15 pronunciation? Baldwin?

16 ALLAN BALDWIN: It's like the piano,  
Baldwin.

17

CHAIRMAN DEMIENTIEFF: Oh, okay.

18

ALLAN BALDWIN: First, I have a letter from  
19 Liisa Johansen Shaw, and I'll turn it in, but I'll just  
read a couple of paragraphs and then turn it in.

20

I urge the Southcentral Alaska Subsistence  
21 Regional Advisory Council -- oh, excuse me. This was  
delivered to the Advisory Council on March 22nd, and  
22 I'll just turn it in for her to you now.

23 She says she would like to recommend that  
the Kenai Peninsula be declared a rural area. As a  
24 Tribal member and an employee of the Kenaitze Indian  
Tribe IRA, in Kenai, I see the grief and outrage in our  
25 people who cannot harvest their own subsistence foods.  
It is a hard thing to see our people standing in line to

1 receive a piece of road kill moose because they cannot  
get a moose here due to the numbers of hunters and  
2 regulations on the Kenai Peninsula.

3 When the Federal Subsistence Board  
determined the Kenai Peninsula to be nonrural in 1991,  
4 that decision was based on the State's nonrural  
determination of the Kenai Peninsula, which the United  
5 States Court of Appeals, Ninth Circuit Court, expressly  
rejected in its decision in the Kenaitze Indian Tribe  
6 vs. State of Alaska. Additionally, this nonrural  
determination violated the Federal Subsistence Board's  
7 own criteria for rural and nonrural determinations as  
well. The Federal Subsistence Board's initial  
8 determination was made without regard to the Title VIII  
of ANILCA, 1980, which was expressly passed to protect  
9 the rights of Alaska Natives.

10 She goes on to say that, in conclusion, I  
believe the Federal Subsistence Board will recommend  
11 that the Kenai Peninsula be determined as a rural area,  
thereby allowing the residents a subsistence lifestyle,  
12 a right that is guaranteed to all Alaska Natives by the  
United States Congress; and an inherent right that gives  
13 us our life.

14 And just a few comments of my own. One of  
the -- in addition to the many special consideration  
15 issues that have been brought before you, in this past  
year the many meetings and board meetings that I  
16 attend -- I sit on the RC&D Board in Kenai, the Kenai  
Peninsula Watershed Forum, and on various other boards.  
17 And it aggravates me and it surprises me that one day a  
person can sit before you or the advisory boards and say  
18 the Kenai Peninsula is nonrural and that it should be  
considered urban. And they say that the Kenaitze just  
19 want to take over the fish and game on the peninsula.  
And then they come before a board asking for special  
20 project money that is specifically designated for rural  
areas.

21 And they also demand that we take their  
22 proposal, we deal with it in a very timely manner. They  
will continue to call the organizations and find out  
23 just where their proposal is in the machine of this  
organization. And they want us to put it on the front  
24 burner. They want us to treat their proposal in a fair,  
just and, again, a timely manner. And I think that that  
25 is the biggest consideration you have, is that the Kenai  
Peninsula rural determination issue has not been dealt



1 with timely. And I would just like to urge you to  
2 consider that it's time to make a decision. It seems to  
3 me that the buck is being passed from one person to the  
4 other, and nobody wants to make the decision that  
5 affects them while they're sitting on a board. And it  
6 is a very hot issue, I understand that. There's a lot  
7 of contention. But it's the black buck that should not  
8 be passed to other people. Thank you.

5

CHAIRMAN DEMIENTIEFF: Any questions?

6 Thank you. Nina Demidoff.

7 NINA DEMIDOFF: Hello, I'm Nina Demidoff.  
8 I'm Alutiiq from the south end of Kodiak, and I've made  
9 my home in the Kenai for the past 24 years. From my way  
10 of living as being a subsistence person, we follow the  
11 four seasons, summer, winter, fall and spring, and we  
12 know when we hunt and when we gather our plants and our  
13 food. And we show our children this and I'd like to  
14 pass it on to my children, and it hurts my kids to find  
15 out that this is being taken away from them. One is 18  
16 and the other one is 13, and I'm soon to be a  
17 grandmother, and I'm hoping that I can pass this on down  
18 to my own grandchildren. And I work for the Kenaitze  
19 Indian Tribe myself, and my son finally went on his  
20 first moose hunt with the Tribe, and they taught him how  
21 to take care of the meat. And I'd like to pass this on  
22 down to the other generations of the people in the area,  
23 and I wish to have this area as rural and not nonrural.  
24 Thank you.

16

CHAIRMAN DEMIENTIEFF: Any questions?

17 Thank you. Eva Lorenzo.

18 EVA LORENZO: My name is Eva Lorenzo, and  
19 I'm a lifelong resident of Kenai, which is my home. I  
20 speak today for my own Native people, to have this  
21 subsistence, because there's many years to come where it  
22 should be passed from generation to generation. I have  
23 grandchildren, and hopefully they'll pass it on to their  
24 children. To me, subsistence is very important.

22 When I grew up, subsistence life was our  
23 lifestyle. I helped my family to put up the fish. They  
24 used to put the backbones on the rack and sun-dry them  
25 for a couple of days, put them in the smokehouse and  
26 make some -- when it smoked a little bit, put it in a  
27 pot, put some potatoes, put some rice. And we helped to  
28 butcher the fish and helped our parents put the fish  
29 away. And I grew up with this lifestyle because we knew

1 how to make salt salmon and we knew how to butcher fish,  
and we knew how to save our fish.

2

And to me, this Native tradition still is  
3 with me. If I could pass it on to my grandchildren and  
their children, I'd be very happy, because today we  
4 don't have very many elders left in our Native tribe.  
And in order to keep what we have, like someone said a  
5 little while back, in order to keep this, we've got to  
survive. And to me, born and raised in Kenai was my  
6 lifestyle, and I'd like to keep my Native culture, my  
Native tradition. And I want to hand it on to my  
7 grandchildren and my great grandchildren. I have five  
grandchildren already. And to me, this is very  
8 important. This is why I come to these meetings,  
because of that. I want to keep this for my Native  
9 people.

10 And I struggle, and I come down here just  
to be here and to speak before the advisory board  
11 because it means a lot to me, my lifestyle that I was  
raised up with. And it's been a long time. I've been  
12 raised in Kenai, I've been a lifelong resident. And to  
me, if this could be passed on from generation to  
13 generation -- and I've already seen what they've been  
teaching the children out at the youth camp, how to  
14 smoke fish, how to pick the fish from the net, and do  
all that stuff. So this is what makes me very happy,  
15 because they know how to make the smoked salmon, they  
know how to pick the fish and all the stuff, what I was  
16 raised up with. So I would like to tell all of you  
thank you for letting me be here today, and I always  
17 make this trip because I know it's very important for  
all my Native people. Thank you.

18

CHAIRMAN DEMIENTIEFF: Thank you. Any  
19 questions? Thank you very much.

20 This concludes our public testimony. We  
don't have any other requests. No more requests. This  
21 concludes our public comments. We're going to move into  
Regional Council comments, but before we begin that I  
22 just want to caution the Council representatives that  
the issue here are the special circumstances, and those  
23 are what I want the comments on. We've all got much to  
do, and if I hear somebody going on about something  
24 other than the special circumstances, I'll be a little  
bit short because we want to keep this conversation  
25 focused. We're not here to debate the Kenai Peninsula's  
rural or nonrural status. If we accept the special

1 circumstances, that will begin that debate. So I just  
2 want to caution that, as well as Board members, you  
3 know, when we advance to the Board discussions. We need  
4 to focus our discussions.

5

6 With that, we'll open the Regional Council  
7 comments. We'll go to the Southcentral first. It's  
8 their region.

9

10 RALPH LOHSE: Mr. Chairman, in response to  
11 your remarks. One of the suggestions that has been put  
12 before you from the staff is not dealing with special  
13 circumstances. It's dealing with an action that you  
14 could take. And I feel that I'm required to talk to  
15 that at the same time. We, as a Council, have found the  
16 Kenai Peninsula rural twice. We have voted as a Council  
17 that there are special circumstances. The special  
18 circumstances have been pretty well laid out before you  
19 so far.

20 One of the special circumstances that we  
21 see, as a Council, is that if there are errors, if there  
22 are mistakes, if there are problems that needed  
23 corrected, to further put it off is unfair to the  
24 subsistence users of the Kenai Peninsula. And use my  
25 colleague, Nat Good's, illustration that he didn't use  
26 this morning and I thought he would when we were dealing  
27 with the C&T findings for the Dan O'Connor family, if  
28 you put it off long enough, like one of the ladies  
29 pointed out out there, some of the elders that are out  
30 there will not be there to enjoy your decision one way  
31 or the other.

32

33 And from that standpoint, as a Council, we  
34 felt that that was the biggest special circumstance. We  
35 do feel that there were questionable practices and  
36 errors made in the providing the communities. We feel  
37 that the fact that the Kenai is found rural for many,  
38 many other purposes, in fact for almost all other  
39 purposes, it seems contradictory to have it nonrural for  
40 subsistence. They've demonstrated their use of it.

41 The thing that I'd like to speak to is the  
42 idea that you put it off and you develop a methodology.  
43 I think you should use the review to develop your  
44 methodology. With the input you get in doing your  
45 review -- and you're going to generate input from a lot  
46 of interested people -- you'll be able to set up a  
47 methodology that will help you when it comes time to  
48 review those further down the line who have not

1 requested a review at this time, who have not been  
2 consistent in trying to point out special circumstances  
3 and why they need a review.

3 A suggestion from my point would be that if  
4 you're going to do anything for reviewing on the Kenai  
5 Peninsula, you should do it when the residents of the  
6 Kenai Peninsula are there, which is in the wintertime.  
7 Any time you're dealing with rural Alaska, the time to  
8 deal with rural Alaska is in the winter. Those are the  
9 people that are there that are making use of  
10 subsistence. The Kenai Peninsula does appear like it  
11 has a large population. That population is much greater  
12 in summertime than in the winter, but the density is  
13 still fairly low.

9 I don't know if you can call it a special  
10 circumstance, but we, as a Council, feel like we have  
11 put a lot of time into this. We feel the fact that we  
12 have requested it, requested this determination twice,  
13 and requested special circumstances once, should in  
14 itself, maybe not be a special circumstance, but be a  
15 fairly powerful reason for you to look closely at your  
16 idea of what special circumstances are.

13 We feel that, you know, one of the things  
14 that was done in the original design was the drawing of  
15 lines. And those lines were arbitrary. We've had  
16 testimony from people who one part of their family is on  
17 one side of the line and the other part of the family is  
18 on the other side of the line, and there really isn't  
19 any difference between the two of them. They live in  
20 the same kind of houses, they drive on the same kind of  
21 road, they live just -- you know, it's a line drawn on  
22 the map. And it's divided families, it's divided  
23 neighbors, and it's caused contention in the area.

19 With that, I've got one more thing to say.  
20 And that is, when you have your hearings, if you have  
21 your hearings, I have to go along with what the lady  
22 said earlier. Hearings are not popularity contests.  
23 When it comes to subsistence issues, you should listen  
24 to subsistence users. There are people who do not want  
25 them to have subsistence access, but the issue really is  
26 do they meet the qualifications of rural and are they  
27 subsistence users. Thank you.

24 CHAIRMAN DEMIENTIEFF: Ralph, I was keeping  
25 track of every bit of your comments and, you know, one  
26 of the things was that was pointed out, in two different

1 areas, is that the Southcentral Regional Council was not  
involved in the original determination, and the fact  
2 that you have made two different recommendations to us.  
Those both were pointed out. So, I mean, if you thought  
3 your testimony was off -- I mean your comments were off,  
you were on on at least one of every point all the way  
4 through. So, I mean, you know, I guess what I'm saying  
is that the Southcentral Regional Advisory Council, you  
5 know, is one of the driving forces here. The Kenaitzes  
I know made the request, but you know from your  
6 involvement with us, the role that the Regional Advisory  
Councils play within the Board process. And so I just  
7 want to comment to that.

8 RALPH LOHSE: Thank you, Mr. Chair, and I  
realize that. I just thought that I should bring it out  
9 one more time.

10 CHAIRMAN DEMIENTIEFF: Sure. Bill, do you  
have a comment?

11

BILL THOMAS: Yes, Mr. Chairman. Thank  
12 you. I have some curiosities here. When you limit our  
participation to special circumstances, (inaudible) with  
13 what the ambitions of the Board are with regard to our  
participation. Are you looking for some sort of a  
14 resolve, or are you wanting us to help justify the delay  
of making a decision? There's been some compelling  
15 testimony heard today. So I guess if we're going to be  
confined to special circumstances, I need to see a fence  
16 that boundaries those circumstances so that any comments  
that I have will fall within those boundaries.

17

CHAIRMAN DEMIENTIEFF: I think you'll find  
18 them in the letter of request which outlines the special  
circumstances that initiated this process. And that's  
19 in the packet. There are the five points that are  
listed in there. I just want to focus on the issue at  
20 hand. We can sit here and debate the issue of whether  
Kenai is rural or nonrural, but that's not the issue  
21 here.

22 The issue here, is there a reason to  
reconsider whether the Kenai is rural or nonrural? And  
23 what's driving that are the five special circumstances  
that the Kenaitze Tribe has given us to consider whether  
24 or not we can take this out of cycle. And then, should  
we find that there are special circumstances, then we'll  
25 begin the process of considering the rural/nonrural  
determination. So that's the issue at hand.

1

BILL THOMAS: I'm going to have to get  
2 ahold of that copy, review it, and I hope we're not  
through with this session by the time I get through it.

3

CHAIRMAN DEMIENTIEFF: They're right at the  
4 start of the letter. It's right in the packet. They've  
been available here the whole time.

5

BILL THOMAS: Council members, Mr. Chair,  
6 we get different correspondence at times.

7

CHAIRMAN DEMIENTIEFF: We do have a couple  
of opportunities here. We go to Regional Council  
8 comments, we're going to do Board deliberation, and we  
come back for Regional comments again. You know, so we  
9 will have a couple of opportunities here.

10 Are there additional Regional Council  
comments at this time? Yes?

11

NAT GOOD: Mr. Chairman. First, it doesn't  
12 seem to me that the concern is just on the part of the  
Kenaitze. It does seem also members of our panel do  
13 have some concerns here regarding what was done in the  
past, and they're not convinced that what was done was  
14 right.

15 Second, this request for review may seem at  
this point to be untimely since it's 1999, and 2000 is  
16 when the census will be done. But on the other hand, it  
wouldn't be 1999 if we had been able to act sooner. The  
17 fault, if it be a fault, that it's 1999, doesn't rest on  
the shoulders of the Kenaitze people. I'd say it's more  
18 on our shoulders.

19 We're not being asked at this point to rule  
or make a decision on whether the Kenai is rural or  
20 nonrural. We're simply being asked to look at it again  
and reconsider original action that placed it in its  
21 present status. And I'd like to support the  
recommendation by Southcentral, that if we're going to  
22 be looking at developing a new means or a better means  
or a fairer means of determining rural or nonrural  
23 status, doing such a review on the Kenai at this point  
might be an effective way of developing that vehicle.

24

Finally, I'm not sure quite whether this is  
25 pertinent or not, but every time I hear this thing, and  
it was brought up again with Fish & Game on the road

1 system for nonrural determination in the state of  
2 Alaska, I always have to think about this to myself and  
3 say, well, if there is a road system or no road system,  
4 if that is what makes the determination, I think we need  
5 to make sure that all rural funds go to the state of  
6 Alaska, because by this determination there are no  
7 further rural areas in the Lower 48. Thank you.

8 CHAIRMAN DEMIENTIEFF: Thank you.  
9 Additional Regional Council comment? Yes.

10 WILLIE GOODWIN: Mr. Chairman. It seems to  
11 me that the testimony that's been coming forth here  
12 today pretty much spells out the special circumstance  
13 here. Why is it that when the decision was made by the  
14 Federal Board that they used a State standard? It don't  
15 make no sense to me. Here we have a federal program  
16 that makes a determination on what's rural or nonrural,  
17 and yet a State standard, which again, by the way, has  
18 some real problem with subsistence, was used.

19 Certainly, I can understand some Board  
20 members feeling to wait for 2000, but why wait? You're  
21 going to revisit it then again anyway. If the  
22 population numbers come out at year 2000 that it's more  
23 than what the standard being used for a rural setting,  
24 then you will have to revisit it. So I would think that  
25 a decision to determine whether or not it meets the  
26 circumstances to come out of cycle is appropriate, and I  
27 think the Board should make a decision whether or not  
28 the communities within the borough are rural. Thank  
29 you.

30 CHAIRMAN DEMIENTIEFF: Thank you.  
31 Additional Regional Council comments? Yes.

32 VINCENT TUTIAKOFF: Yes, Mr. Chair. Vince  
33 Tutiakoff of Kodiak-Aleutians.

34 Kodiak was used as an example of a  
35 redefinition of nonrural to rural, and it was a special  
36 type circumstance that came about. The communities, as  
37 they developed in the past eight years that I have been  
38 part of this Board, I've seen a great pride in culture,  
39 grade pride in their language, a great pride in the use  
40 of their substance on and around Kodiak. And that was  
41 all because a determination was made that Kodiak is a  
42 rural community. And that on its own should be taken  
43 into -- as part of the special circumstance for the  
44 Kenai Peninsula.

1

2 We from the Aleutians know full well the  
3 impact of not having cultural pride, or being overrun  
4 because there's a military need, being removed from your  
5 homes. Basically, that's what's happened to the Kenai  
6 Peninsula. The Alaska State Department of Fish & Game  
7 has been anti-subsistence and, to use Willie's words  
8 over there, why did we use the State standard to  
9 determine subsistence? I understand the process, the  
10 need to -- and not having the Advisory Councils being  
11 part of the determination process. They were not in  
12 place. There was a six-month period in the beginning of  
13 this whole process that caused a lot of confusion. So  
14 we from Kodiak-Aleutians support the Southcentral  
15 subsistence recommendation for the Kenai rural issue,  
16 and ask for the Board's vote to rectify an injustice to  
17 these people on the peninsula. Thank you.

18 CHAIRMAN DEMIENTIEFF: I think your  
19 testimony is real germane, because although it wasn't  
20 appealed because it was found out during the regulatory  
21 cycle, that most of Kodiak was found to be rural, but in  
22 the original recommendation, Kodiak was aggregated with  
23 Chiniak and the -- is that the Coast Guard station? You  
24 know, so that was aggregated early on in the process.  
25 And I guess what I'm pointing out to you, I think your  
26 testimony is real -- because there was an aggregation  
27 error that was made early on in our process when we  
28 adopted the regulations back in 1990, 1991.

29 VINCENT TUTIAKOFF: Thank you, Mr. Chair,  
30 and again we urge you to take the special action and  
31 consider the Kenaitze's need to have subsistence in  
32 their lifestyle. Thank you.

33

34 CHAIRMAN DEMIENTIEFF: Mr. Goodwin, I was  
35 just going to comment briefly, too, that why did we use  
36 that early on process. And, you know, it's been said  
37 many times in many of the meetings that I've been  
38 involved with the Federal Board, we had to have a  
39 beginning point. And in order to get a program on the  
40 ground, in many cases we adopted the State regulations.

41

42 UNIDENTIFIED SPEAKER: (Inaudible)

43

44 CHAIRMAN DEMIENTIEFF: I was talking about  
45 the regulations. Mr. Thomas.

46 BILL THOMAS: Thank you, Mr. Chairman.  
47 Having reviewed some of the language in here, one of the



1 most interesting terms I find in here is "aggregation."  
Growing up, one of the first words I learned was  
2 "rural." Our textbooks in school made reference to  
rural settings. And rural was like the cheese. It  
3 stood alone. There wasn't any aggregation. So if you  
want to change the character of something, aggregate it  
4 and it's no longer what it's supposed to be. So that  
was the flaw, a serious flaw, in any determination by  
5 using the process of aggregation. Had it not been for  
that, there wouldn't have been any argument that the  
6 Kenai Peninsula would have in fact qualified as a rural  
area.

7  
I was here from the very first meeting, and  
8 the testimony we heard at that meeting was in great  
contrast to what it is now. There wasn't anybody at  
9 that meeting that supported any part of ANILCA. And the  
results of the determination from that point on, we  
10 selected the attitudes and ambitions of the testimony we  
heard then. So with my colleagues on the Regional  
11 Councils, I would encourage you to eliminate that  
process of aggregation in determining rural status, and  
12 go back to the formula that we used initially. From  
what I understand, there was a figure of 7,000  
13 population in any one given community that decided  
whether or not it was rural or not. And for some reason  
14 that doesn't seem to apply to the Kenai Peninsula, but  
it does in the rest of the state. So I would urge  
15 reconsideration and support the testimony, the  
compelling testimony, to get these proud people off  
16 their knees and give them back the courage to look  
society in the eye. Thank you.

17  
CHAIRMAN DEMIENTIEFF: Thank you.  
18 Additional Regional Council comment? Mr. Sam.

19 RONALD SAM: Yeah, thank you, Mr. Chairman.  
Just for my clarification, I have a question. And it  
20 is, just how -- to what extent does Title VIII of ANILCA  
cover these people? Because I, too, feel for all of our  
21 Native people.

22 CHAIRMAN DEMIENTIEFF: Is that with regard  
to the fact that Title VIII is Indian legislation? Is  
23 that something you could speak to, Keith?

24 KEITH GOLTZ: I can speak to it. I do so,  
though, with a preface that I think much too much is  
25 being made out of those terms. As lawyers use them,  
it's a method, a tool, for interpretation, and you only

1 use that tool when the plain language of the statute is  
unclear. So that in almost every case, whatever the  
2 answer is, it's going to be irrelevant to a  
determination. Our first task should be to read the  
3 plain words of the statute.

4 Having said that, there has been some  
controversy over the term "Indian legislation." One  
5 panel of the Ninth Circuit did say that it was. That  
was the original Gambell court. That case was taken to  
6 the Supreme Court and reversed there. A second panel of  
the Ninth Circuit just recently has said that Title VIII  
7 of ANILCA is not Indian legislation. I just heard this  
morning that that will be brought up for  
8 reconsideration. But whatever the answer is, that  
shouldn't drive our considerations here, and it doesn't  
9 drive the considerations of the court. We should be  
looking at the purposes of ANILCA, the factual record  
10 before us, and come to reasoned and rational decisions.

11 CHAIRMAN DEMIENTIEFF: Additional Regional  
Council comment?

12

GRACE CROSS: Mr. Chair.

13

CHAIRMAN DEMIENTIEFF: Oh, yes.

14

GRACE CROSS: After listening all day and  
15 reading the five special circumstances, I feel that just  
the five special circumstances provide compelling  
16 evidence to make expedient decision in this case instead  
of having people to wait additional more years. We're  
17 not talking about one individual, one individual looking  
for C&T determination. We're looking at a group of  
18 people. Thank you.

19 CHAIRMAN DEMIENTIEFF: Thank you.  
Mr. Thomas, you have additional comment?

20

BILL THOMAS: Thank you, Mr. Chairman.  
21 With respect to our Solicitor's explanation on getting  
away from lawyers' sense of language and getting back to  
22 existing language in Title VIII, of which I'm more than  
happy to do. Because you read the first five lines of  
23 Section 8.01 in Title VIII, and that will give you clear  
direction on who is eligible and who is not.

24

Also, Title VIII is only an umbrella. If  
25 the stocks are adequate, if the management principles  
are as good as people say they are, then there shouldn't

1 be any concern. But the longer our meeting goes on, the  
longer we find that there are many stocks in peril, and  
2 nobody's made a determination that there's a problem  
with fisheries management. So I would agree with the  
3 Solicitor and make reference to Title VIII. Thank you.

4 CHAIRMAN DEMIENTIEFF: Thank you.  
Additional Regional Council comment? Yes, Mr. Rexford.  
5

FENTON REXFORD: Mr. Chairman. I'd like to  
6 support the Southcentral Regional Advisory Council's  
recommendation, in having the Kenaitze Indian Tribe  
7 preserve their livelihood and their subsistence way of  
life and pass it on to their children. I would urge  
8 that we take care of this. After I've been hearing all  
the testimony and reading background on many testimonies  
9 taken, and there is enough to make a decision this  
afternoon. So I support, again, Southcentral,  
10 (inaudible) for the Kenaitze Indian Tribe folks from  
down there, Kenai area. Thank you.

11  
CHAIRMAN DEMIENTIEFF: Thank you.  
12 Additional comment?

13 WILLIE GOODWIN: Mr. Chairman?

14 CHAIRMAN DEMIENTIEFF: Yes.

15 WILLIE GOODWIN: One other point I forgot.  
I do support Southcentral's recommendation. But another  
16 point I would like to point out is the majority decision  
of the Staff Committee. I like that decision, to view  
17 this as a special circumstance.

18 CHAIRMAN DEMIENTIEFF: Yes.

19 GRACE CROSS: Mr. Chairman. If the Board  
can consider individual C&T, why not tribal C&T?  
20

CHAIRMAN DEMIENTIEFF: Do you want to take  
21 a crack at it?

22 KEITH GOLTZ: Yeah.

23 CHAIRMAN DEMIENTIEFF: Mr. Goltz was just  
commenting on how proud he was that we got through the  
24 whole regulatory process and never called on him once,  
and here we are.

25  
KEITH GOLTZ: That's true. It's a sign of

1 a good meeting when you shut the lawyer up. And we're  
going downhill now, you know.

2

3 This is not an easy one to answer. There  
4 is an answer. And the answer is in the plain language  
of ANILCA, and it has to do with Congress and how it  
5 treated Park areas. The Park and Monument areas were  
treated with special consideration for the Park and  
6 Monument areas. Considerations that weren't given to  
other public lands. And basically, what that means is  
7 that fewer people are probably going to get to hunt and  
fish on Parks and Monuments than they would get to do on  
Refuges and Forests. And that's a judgment made by  
Congress.

8

9 The way they did that is to set up a  
different sort of eligibility requirements for Parks and  
Monuments. And in the legislative history, Congress  
10 said a couple of things. One is they didn't want a  
permit society. And the Park Service has implemented  
11 that basically by setting up resident zones. So that if  
somebody's within that zone, you get to use the Park and  
12 Monument lands.

13 They also had special consideration given  
for people who had historically used Parks. This is  
14 something different than the rest of Title VIII. In the  
rest of Title VIII, you become a rural user by living in  
15 a rural area. You don't need any long history, until we  
get to periods of extreme shortage. In Parks and  
16 Monuments we've got special rules, special results. And  
I would agree with you, at first blush it appears wildly  
17 inconsistent.

18 ANILCA does not, however, turn to the  
tribal unit with a blind eye. It starts with a tablet  
19 that includes all of rural Alaska in periods of  
abundance. When shortages occur, we narrow down the  
20 area of available user groups in Section 8.04, so that  
we gradually become dealing with people who have a  
21 higher dependence on the resource and an historical use  
pattern. And I think our common experience would show  
22 us that the people who have been on the land the longest  
and who have lived closest to the resource probably are  
23 going to be the tribal groups in many cases. We don't  
start that way, we don't use that language to get there,  
24 but that's probably where we do end up in 8.04.

25 CHAIRMAN DEMIENTIEFF: Further Regional  
Council discussion? You will get another opportunity

1 once we, of course, begin the Board deliberation  
process, which we shall now begin.

2

NILES CESAR: Are you ready for Board  
3 deliberation?

4 CHAIRMAN DEMIENTIEFF: Yes, that's what I'm  
saying.

5

NILES CESAR: Mr. Chairman, I'm prepared to  
6 make a motion so we have something to discuss on the  
floor. I move to accept the Kenai tribe request and  
7 Regional Advisory Council recommendation to reconsider  
the Board's 1990 nonrural determinations on the Kenai  
8 Peninsula, based on special circumstances. That review  
is to be completed and back to the Board by May 2000.  
9 So moved.

10 CHAIRMAN DEMIENTIEFF: We have a motion.  
Is there a second to the motion?

11

UNIDENTIFIED SPEAKER: Second.

12

CHAIRMAN DEMIENTIEFF: It's been moved and  
13 seconded. Discussion?

14 DON OSTBY: Mr. Chair.

15 CHAIRMAN DEMIENTIEFF: Yes.

16 DON OSTBY: It's with some hesitancy that I  
comment, being the newest member of this group, so I  
17 hope you'll be patient with me. The new ears and new  
eyes I bring to this may have misunderstood. My  
18 understanding, that this is really not a C&T question,  
nor is it a Native preference question. What I  
19 understand this to be is a question regarding the  
original rural determination decision for the Kenai and  
20 whether or not special circumstances exist which argue  
for a review of that decision.

21

With regards to significance, and after  
22 listening to the thoughtful testimony today, it would be  
hard to not feel that this is certainly significant to  
23 many of the people in this room. The staff, in their  
report, acknowledged inconsistencies of applying  
24 criteria, which raised questions in their minds, and  
acknowledge the availability of new information. From  
25 my perspective, at least, administrative convenience is  
not an appropriate criteria for deciding whether or not

1 to do out-of-cycle review.

2 In addition, the divisiveness of this issue  
3 must be acknowledged, but cannot be avoided because it  
4 exists regardless of what decision we make. So from my  
5 perspective, at least, there is significance to this  
6 situation. And I believe that the issue of timing  
7 that's been raised, had this been a new proposal to the  
8 Board, I think we would be fully justified in deferring  
9 it, recognizing the oncoming census. However, this is  
10 something that in many ways we brought upon ourselves  
11 through the many years of discussion, and so I propose  
12 to support this motion.

13 CHAIRMAN DEMIENTIEFF: Additional comment?

14 NILES CESAR: Mr. Chairman.

15 CHAIRMAN DEMIENTIEFF: Yes.

16 NILES CESAR: Without sounding like I'm  
17 speaking to the choir here, I think we, you know, have  
18 listened to a lot of testimony over the last few years,  
19 and I think that we all have our own position about the  
20 rightness or wrongness of the decisions made in 1990.  
21 The fact remains, is we're here, we're here today, and  
22 for us to put this off until information is available,  
23 which would likely be 2002 or 3, possibly, before full  
24 information is available, I don't think is reasonable,  
25 and I think that we've got to start the process. And I  
26 think this is the way we start it, is to get on with it.  
27 I would support my own motion.

28 CHAIRMAN DEMIENTIEFF: Additional comment?

29 DAVE ALLEN: Mr. Chairman.

30 CHAIRMAN DEMIENTIEFF: Yes, Mr. Allen.

31 DAVE ALLEN: I'll be very brief. I came to  
32 this meeting, I think, pretty well convinced that the  
33 Staff Committee had made a very good argument for delay.  
34 However, as I listened to the testimony today, I think  
35 the issue of its significance to the community, I've  
36 been reminded very sharply, not only because of today's  
37 testimony, but also because of testimony that we've  
38 received in the past on the Kenai relative to how  
39 significant and how important this overall issue is on  
40 the Kenai, and the divisiveness that clearly it has  
41 created.

1

I'm not sure whatever we can do,  
2 Mr. Chairman, is going to at all diminish the  
divisiveness, because even as we speak about the  
3 possibility of passing the resolution to begin  
immediately to consider this out of cycle, whatever our  
4 decision, I don't think anyone should presume that that  
decision is necessarily going to remove that issue on  
5 the Kenai. Because whatever the outcome, I think that  
the possibility still exists that some form of  
6 divisiveness will remain.

7

However, we've been at this business for  
quite a while now, as has been mentioned. When we began  
8 the process in 1990, I think there was a high level of  
expectation that the State would act quickly to resume  
9 its responsibility by changing its constitution as  
necessary. Here we are nine years later with the very  
10 likely prospect that it's never going to happen. We  
have been the managers of the subsistence priority for  
11 the last nine years. It certainly looks like we'll  
continue to do this. It seems to me that we need to get  
12 on with the business, and this is certainly an issue of  
important business that we need to deal with. So I  
13 intend to support this motion, Mr. Chairman.

14

CHAIRMAN DEMIENTIEFF: Thank you.  
Additional comment? Mr. Rabinowitch.

15

SANDY RABINOWITCH: Sandy is good enough.  
16 Thank you, Mitch.

17

I'm encouraged by Mr. Allen's words and,  
having been part of the process and been to many of the  
18 meetings, both on the Kenai Peninsula and many of the  
Southcentral Council meetings, and heard much of this  
19 testimony several times, I intend to vote for the  
motion.

20

CHAIRMAN DEMIENTIEFF: As far as my  
21 perspective on this tonight, you know, I believe that  
there was an error in the aggregation of the  
22 communities. And I think we found that out in 1995 when  
we did the C&T determinations, because in a similar  
23 issue we found some huge gaping holes that we did our  
best to work on at that particular time. And while it  
24 wasn't a perfect decision, you know, we still were able  
to document some C&T determinations.

25

And we have firsthand knowledge of the

1 divisiveness of this issue. I, myself, personally  
2 attended seven out of the eight of those hearings, six  
3 out of the seven on the peninsula, and, you know, was  
4 subject to some terrible testimony, indicating the  
5 divisiveness of this issue. The only reason I missed  
6 the one was because I recall I had brand-new car, car  
7 problems, and that was the only thing that caused me to  
8 miss one of the hearings. I think that was in Homer.  
9 But believe me, when I did catch up with the crew, I  
10 tracked them and I found that the same type of testimony  
11 was received in Homer that was basically received pretty  
12 much throughout the northern part of the peninsula  
13 anyway.

14 With regard to, you know, whether or not  
15 ANILCA is Indian legislation or not, I was particularly  
16 caught by the testimony from Kodiak and with regard to  
17 the correction in that decision that was made, and the  
18 explosiveness that's happened, explosive regrowth in the  
19 Alutiiq culture since then. And I don't doubt for one  
20 minute that that was tied to that correction in the  
21 determination. Because in this decade the Alutiiq  
22 culture has come alive. And for the most part, it was  
23 beginning to be a dormant culture at that time. And I'm  
24 particularly speaking of whether or not ANILCA is Indian  
25 legislation, there's no doubt that that decision, or  
26 that correction of what was a wrong decision or wrong  
27 assertion, was directly responsible, or one of the  
28 principal responsibilities.

29 The fact that there was no Regional Council  
30 participation, we didn't have Regional Councils at that  
31 time. But the growth in the federal program, at least  
32 on the game side, has come from recent years and the  
33 absolute involvement of our Regional Councils and their  
34 participation in all of our decisions. I wish we would  
35 have had these kinds of Regional Councils when we first  
36 started out. But the growth that we've made, the  
37 progress that we made is because in recent years we  
38 partnered, although we have retained, clearly, the  
39 decision making authority, you know, clearly, because  
40 that is the Board's responsibility. It's not a  
41 responsibility of the Regional Councils. But we've  
42 partnered and we've come to grow with their  
43 recommendations. And it's been good advice. And every  
44 time we've hit a thorny problem -- and we've hit a  
45 few -- the Regional Councils have played a principal  
46 role, whenever we've had to bring whatever. And the  
47 most recent example was signed, the resolution was  
48 adopted yesterday, and the recent signing of the Muskox



1 Management Plan in the North Slope.

2 And every time we accomplish them, you  
3 know, it makes me proud because that does prove that  
4 irregardless of whether you're State, in the case of the  
5 Borough, the federal government, you know, we've been  
6 able to come together. We've been able to persevere  
7 with local people, despite each of our mandates, in some  
8 areas. And I'm proud of each and every one of those  
9 successes. And at the bottom of each and every one of  
10 those successes, the Regional Advisory Council has been  
11 the driving force. And as we hit these thorny problems  
12 in the future, it's going to continue to be that way  
13 because that is their role.

14 With regard to the Southcentral Regional  
15 Advisory Council rural recommendation, I've been  
16 supportive in the past of delaying the Regional Council  
17 recommendation. And the reason is because I wanted to  
18 make sure that in this kind of a tough issue, that the  
19 Southcentral Regional Advisory Council went out and did  
20 its homework. And they did that last fall. They've  
21 done everything that we have asked them to do.  
22 Everything. And while part of me wants to jump in and  
23 tackle these tough problems, in recognition of this  
24 trend of going to the Regional Councils, I just wanted  
25 to make sure that the Regional Council was out there and  
26 knew exactly what the situation was.

27 And the Regional Council did that. They  
28 went out there and they had their hearings, they took  
29 the tough testimony. And their recommendation, for that  
30 reason, because they went out and did their homework,  
31 has so much more weight with me. And I never doubted  
32 their recommendation at any point in time. But the fact  
33 that the Council went out there and did its homework,  
34 I'm ready to go for all of those reasons, to support  
35 this motion.

36 But I caution, even if we pass this today,  
37 it doesn't mean that tomorrow the Kenai Peninsula is  
38 going to be rural or next week it's going to be rural,  
39 or that we can make a decision next month. We are  
40 making this based on what happened in 1990, the 1990  
41 census information. We're basing it on that because  
42 that's our most recent. Until we get complete. So  
43 we're going to take our time.

44 And I think, as far as the staff  
45 recommendation of waiting for the 2002 census, and

1 building a good solid recommendation, I personally  
2 subscribe to the testimony that several people gave  
3 today. Use this as a tool to allow us, when the new  
4 census information comes in, that we'll be that much  
5 farther along.

6 But to the Kenaitzes, it appears that the  
7 request is going to be answered, but don't expect it to  
8 happen overnight. We're assuming management in fish.  
9 There's no apparent change in the legislative  
10 initiative. We have big and serious work on every  
11 front. Still, it will be June 1st before we get the  
12 first money to work on fish. We have all of these other  
13 complicated issues, and some of you that have sat  
14 through here the last few days and last few years have  
15 seen them. Some of the things I've mentioned that we  
16 have to work on.

17 If and when this motion does carry, we're  
18 going to have to schedule it, we're going to have to  
19 work on it. It's not going to happen overnight. We're  
20 going to need the time to be able to do it, and that may  
21 frustrate some of you. But the fact is, if this motion  
22 carries, we're going to go ahead and we're going to  
23 schedule that to the best of our ability, and within the  
24 resources that we have. But believe me, we have worked  
25 this staff as hard as we can with the resources we have.  
It doesn't mean we can't do it. It doesn't mean we're  
going to delay for years. But it does mean that we're  
going to need some time to do it. But we will schedule  
those meetings when we're going to talk about this. We  
will schedule them, there will be a public meeting. You  
will be available to track with us as we schedule these  
things. But I just ask, knowing what I know about the  
Kenai, having gone through those 95 determinations when  
we had very much less on our plate -- you know, knowing  
what I know about this issue, it's going to take some  
time, but we will be able to do it. And you will be  
able to track us, because it's not something that's  
going to be done behind doors when we talk about  
scheduling these things.

Final round of Regional Council comment and  
we're ready to vote. Mr. Thomas?

23 BILL THOMAS: Thank you, Mr. Chairman.  
24 This is indeed a milestone in my involvement. In the  
25 capacity of a Regional Vice Chair, I knew the potential  
was there, I knew the chemistry was there, I knew the  
commitment was there. I appreciate the

1 conscientiousness and the convictions that were  
2 eloquently expressed, especially by Mr. Allen, with  
3 regard to the divisiveness. The nature of the  
4 population of Alaska, the nature of the issue at hand  
5 has opposing philosophies, and respectable  
6 justifications on both sides. Resource is one part of  
7 our environment that demands respect and responsible  
8 stewardship of its use, whether it's for consumption or  
9 whether it's for marketing. It deserves the respect of  
10 that responsibility and discipline.

11  
12 I'm also really elated to know that the  
13 testimony we heard today, based on some very good  
14 homework from Southcentral, caught the ear and was able  
15 to be understood to a point to give you the confidence  
16 to move forward on it. I commend you for that. I think  
17 it's very wise. It's not going to be easy. You're  
18 going to run into confrontation in the process. But we  
19 have a legislative process in ANILCA that gives us a  
20 step by step guideline. As long as we can follow those  
21 guidelines and steps to the best of our understanding  
22 and interpretation and intent, we'll do okay. And I  
23 just wish the Board as a majority to pass this motion.  
24 I certainly support the motion. And in any case, you've  
25 all got my respect regardless of the direction you take  
on your vote. Thank you, Mr. Chair.

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CHAIRMAN DEMIENTIEFF: Any other final  
Regional Council comment?

RALPH LOHSE: Mr. Chair. Ralph Lohse,  
Southcentral. I, too, would like to thank the Board for  
the motion that's on the table. I hope after this  
motion is voted on the ball will be in your court, not  
ours. And as Southcentral chair, I'd like to also  
remind you that, you know, the job's not going to be  
done for the people that have been coming and  
testifying. You're going to have to count on the fact  
that a lot of the people that have brought it this far  
are going to have to be coming again, and they deserve  
our respect. And I thank you for that.

CHAIRMAN DEMIENTIEFF: Any other final  
thoughts?

PEGGY FOX: Mr. Chair.

CHAIRMAN DEMIENTIEFF: Yes.

PEGGY FOX: We're done with Council

1 comments?

2

CHAIRMAN DEMIENTIEFF: I don't know; are we  
3 all done? Okay, go ahead, Fenton.

4 FENTON REXFORD: Thank you, Mr. Chairman.  
Your actions today, or the other day, on the example  
5 becoming reality is the cooperation with the  
controversial partners or colleagues that we have around  
6 this table here. It's difficult to get all the users  
and all the federal and state agencies together, but  
7 once we get a working group, we roll up our sleeves  
together in the room and make it hot. But we got time  
8 to cool off and pursue your project, whatever it is.  
Thank you for using this as an example, and hopefully  
9 that will go on with the folks in the Southcentral area.

10 CHAIRMAN DEMIENTIEFF: Vince.

11 VINCENT TUTIAKOFF: Yes, Mr. Chairman. I'd  
like to thank you for your comments earlier regarding  
12 the explosive lifestyle changes made in Kodiak. We  
understand this process is going to take what it will  
13 take for the people in Kenai. At least now they can  
start to put together a program that will be good for  
14 their communities, for their children, and the elders  
now can be looked at as teachers. And hopefully this is  
15 what this is all about, and I thank you for the motion  
and hope that we go ahead from here. Thank you.

16

CHAIRMAN DEMIENTIEFF: Peggy?

17

PEGGY FOX: Yes. I just wanted to add my  
18 support to the motion. And very briefly, I guess the  
only thing else that I wanted to say that would add to  
19 what's already been said is to build on what Ralph was  
saying and thank the people that came today and that  
20 came to the hearings on the Kenai. I think the more  
information we have, the better the decisions we make.  
21 And very often the decision sways on the testimony at  
the hearing. And so I wanted to thank you and say I'll  
22 probably see you at the next hearing.

23 CHAIRMAN DEMIENTIEFF: Okay. I think  
everybody's had their say now, and if nobody has any  
24 objection, we're going to go ahead and move on and take  
the vote. All those in favor of the motion, please  
25 signify by saying "aye."

1           IN UNISON: Aye.

2           CHAIRMAN DEMIENTIEFF: Those opposed, same  
3           sign.

4           (No response.)

5           CHAIRMAN DEMIENTIEFF: Motion carries.

6           With that we complete work in the  
7           Southcentral Peninsula. I just want to make a brief  
8           comment. We've got a couple of other items, Board  
9           members, as I talked about earlier. One of our friends  
10          is leaving us, and now I know why. He must have had an  
11          inkling of the vote. Mr. Robert Willis, I guess will be  
12          taking a job in D.C. But he was a big part of those  
13          hearings on the Kenai in 1995, and he must have had an  
14          inkling which direction this Board was going to go,  
15          because he's transferring out before we head back to the  
16          Kenai. But I understand, Robert, that you've got a new  
17          assignment back in D.C., and I just want to express my  
18          appreciation for all the work you've done within your  
19          job responsibilities.

20          ROBERT WILLIS: Thank you, Mitch. Going  
21          back to the Kenai has nothing to do with my decision.

22          (Laughter)

23          ROBERT WILLIS: I think the Board did some  
24          excellent work today, and I'd like to personally thank  
25          everybody that I've worked with and that supported me  
26          and worked so hard to make this program go for the last  
27          seven years. I agree with you that there's a lot of  
28          thorny issues that are going to have to be dealt with.  
29          Every time the Board meets and the Council meets and the  
30          Staff Committee meets. I'm personally encouraged by the  
31          increasing length of the list of consent agenda items  
32          that we have.

33          Certainly there will always be a lot of  
34          disagreement in an arena like this, but there's also a  
35          common thread that binds us all together, and that is  
36          that everybody here is concerned about making sure that  
37          there are always healthy populations of wildlife out  
38          there, both for its own intrinsic value and for the  
39          benefit of the people who use it. And I think that as  
40          long as we all remember that, that we'll continue to be  
41          able to work together, even though we also continue to  
42          disagree. So thanks for the experience and for the

1 education.

2 CHAIRMAN DEMIENTIEFF: Thank you. Again,  
we had asked the Regional Advisory Councils to meet to  
3 name some people to help us with our fisheries  
discussions with the State. I am going to ask the  
4 Commissioner of Department of Fish & Game to add these  
names to the list of people who will meet jointly. If  
5 the State, for whatever reason, balks at the decision,  
these two names and their alternate will be added to our  
6 Federal Board when we meet to discuss these discussions.  
You know, we will give the State the courtesy, since  
7 this did come up only on Monday, we will give the State  
the courtesy if they want to reject. That's no problem.  
8 They'll still be a part of our own discussions, because  
normally we meet prior to meeting with the State to go  
9 over issues. But the Regional Council chairmen have  
appointed Dan O'Hara and Willie Goodwin as their two  
10 delegates, with Ron Sam as their alternate. So I would  
just make that announcement. And they will be involved  
11 in the discussions at whatever level.

12 The recommendation of the Staff Committee  
with regard to the core team staff is that Greg Bos be  
13 the federal lead, Bob Gerhard, Monty Millard, and Cal  
Casipit. That's the recommendation from the Staff  
14 Committee as the core team staff. I'm not sure, did we  
need that for a Board motion?  
15

UNIDENTIFIED SPEAKER: You asked us to  
16 report to you.

17 CHAIRMAN DEMIENTIEFF: To report on what  
the recommendation was. I don't know if we want to just  
18 make that. Now, the thing to point out is irregardless,  
even though we've kept this team staff, that it's not  
19 going to limit other staff being there. They're not  
going to be closed meetings. There just simply wasn't  
20 enough seats to go around, since we tried to keep that  
core team real small. But every time they meet, either  
21 individually or with the State, you know, other staff  
are still invited to that process. Particularly, I'm  
22 sure they'll be airing out their agendas of what's going  
to be on there, and if there's something that's a  
23 subject matter that people feel they need to have a  
staff person on there, then I don't think that's going  
24 to be a problem. So do we want to just accept the Staff  
Committee recommendation, or what's the pleasure of the  
25 Board? Is there a move to do that?

1 UNIDENTIFIED SPEAKER: So moved.

2 UNIDENTIFIED SPEAKER: Second.

3 CHAIRMAN DEMIENTIEFF: It's been moved and  
seconded. Discussion? Hearing none, all those in favor  
4 signify by saying "aye."

5 IN UNISON: Aye.

6 CHAIRMAN DEMIENTIEFF: Those opposed, same  
sign.

7  
(No response.)

8 CHAIRMAN DEMIENTIEFF: Motion carried.  
9

I think we've completed our agenda, have we  
10 not? Is there anything else? Mr. O'Hara?

11 DAN O'HARA: Mr. Chairman, I just want to  
thank you for helping us out with the proposals. We  
12 appreciate you taking each one and wading through them.  
We found out that you are not a rubber stamp board. You  
13 can tie a vote just like we can, and a lot of  
consideration was given, and we thank you very much for  
14 your time.

15 CHAIRMAN DEMIENTIEFF: Good, okay. With  
that, we've completed our work ahead of schedule, and I  
16 guess there being no further business, we shall adjourn  
the Board.

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(Meeting adjourned at 2:45 p.m.)

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1 STATE OF ALASKA )

2 I, KIM R. BEHRENS, RMR-CRR, Registered  
3 Merit, Certified Realtime Reporter, Notary Public in and  
4 for the State of Alaska, do hereby certify that the  
above transcript, pages 220 through 323, inclusive, was  
5 reported stenographically by me, and at my direction  
transcribed by means of computer.

6 I FURTHER CERTIFY that the foregoing is a  
7 transcript of the proceedings which occurred at the time  
and place specified hereinbefore.

8 IN WITNESS WHEREOF, I have hereunto set my  
hand and seal this day of , 1999.

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Notary Public  
State of Alaska

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My Commission Expires: 4.24.00

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